

By: Representatives Blackmon,
Simpson, Smith (39th), Moak,
Compretta

To: Judiciary A

HOUSE BILL NO. 6

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 11-1-60, MISSISSIPPI CODE OF 1972, TO REVISE CAPS ON NONECONOMIC
4 DAMAGES; TO BRING FORWARD SECTIONS 11-1-63 AND 11-1-64,
5 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT RELATED TO
6 INNOCENT SELLER REVISIONS; TO AMEND SECTION 11-1-65, MISSISSIPPI
7 CODE OF 1972, TO REVISE PUNITIVE DAMAGES; TO AMEND SECTION
8 11-1-66, MISSISSIPPI CODE OF 1972, TO REVISE PREMISES LIABILITY;
9 TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE JOINT
10 AND SEVERAL LIABILITY; TO AMEND SECTION 13-5-23, MISSISSIPPI CODE
11 OF 1972, TO PROVIDE THAT JURORS CAN ONLY BE EXCUSED FROM SERVICE
12 FOR ILLNESS OR UNDUE HARDSHIP; TO CODIFY SECTION 13-5-24,
13 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURORS CAN POSTPONE JURY
14 SERVICE ONE TIME ONLY; TO AMEND SECTION 13-5-25, MISSISSIPPI CODE
15 OF 1972, TO LIMIT THE FREQUENCY OF JURY SERVICE; TO AMEND SECTION
16 13-5-28, MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF JURY
17 SERVICE EXEMPTION ENTITLEMENT TO BE INCLUDED IN JUROR SUMMONSES;
18 TO AMEND SECTION 13-5-34, MISSISSIPPI CODE OF 1972, TO REVISE THE
19 PUNISHMENT FOR FAILURE TO APPEAR FOR JURY SERVICE; TO CODIFY
20 SECTION 13-5-99, MISSISSIPPI CODE OF 1972, TO PROVIDE EMPLOYMENT
21 PROTECTIONS FOR JURORS; TO AMEND SECTION 25-7-61, MISSISSIPPI CODE
22 OF 1972, TO CREATE A LENGTHY TRIAL FUND; TO AMEND SECTION 33-1-5,
23 MISSISSIPPI CODE OF 1972, TO ELIMINATE CERTAIN JUROR EXEMPTIONS;
24 TO REPEAL SECTIONS 41-17-7 AND 47-5-55, MISSISSIPPI CODE OF 1972,
25 WHICH PROVIDE CERTAIN EXEMPTIONS FROM JURY SERVICE; TO AMEND
26 SECTION 83-48-5, MISSISSIPPI CODE OF 1972, TO EXPAND THE MEDICAL
27 MALPRACTICE AVAILABILITY PLAN THAT IS ADMINISTERED BY THE TORT
28 CLAIMS BOARD FOR PRIOR ACTS COVERAGE PURPOSES; TO AMEND SECTION
29 11-46-1, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF
30 "EMPLOYEE" FOR PURPOSES OF LIMITED LIABILITY UNDER THE TORT CLAIMS
31 BOARD TO INCLUDE THOSE PHYSICIANS WHO PROVIDE HEALTH CARE SERVICES
32 TO MEDICAID RECIPIENTS, STATE AND SCHOOL EMPLOYEES HEALTH
33 INSURANCE PLAN PARTICIPANTS AND CHILDREN'S HEALTH INSURANCE
34 PROGRAM PARTICIPANTS IF AT LEAST THIRTY-FIVE PERCENT OF THE
35 PHYSICIAN'S PATIENTS ARE MEDICAID RECIPIENTS, OR NOT TO EXCEED ONE
36 HUNDRED TWENTY-FIVE PHYSICIANS; TO INCLUDE CERTAIN RETIRED
37 PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID HEALTH CARE SERVICES TO
38 ANY PUBLIC ENTITY OR PRIVATE ENTITY; TO CREATE IN THE STATE
39 TREASURY A SPECIAL FUND TO THE CREDIT OF THE MISSISSIPPI TORT
40 CLAIMS BOARD WHICH SHALL BE COMPRISED OF ANY FUNDS MADE AVAILABLE
41 FOR THE FUND BY THE LEGISLATURE; TO PROVIDE THAT MONIES IN THE
42 SPECIAL FUND SHALL BE EXPENDED BY THE MISSISSIPPI TORT CLAIMS
43 BOARD TO PROVIDE ADDITIONAL FUNDS FOR PRIOR ACT COVERAGE FOR PLAN
44 PARTICIPANTS AND TO PAY THE MEDICAL MALPRACTICE PREMIUMS FOR THOSE
45 RETIRED PHYSICIANS DESCRIBED HEREIN; TO CREATE AN ADVISORY COUNCIL
46 TO ASSIST THE MISSISSIPPI TORT CLAIMS BOARD IN DETERMINING WHETHER
47 A PHYSICIAN MEETS THE PERCENTAGE REQUIREMENT NECESSARY TO QUALIFY
48 AS AN EMPLOYEE FOR LIMITED LIABILITY PURPOSES; TO PROVIDE RATES
49 FOR COPIES OF MEDICAL RECORDS THAT MAY BE CHARGED BY MEDICAL
50 PROVIDERS AND FACILITIES; TO PROVIDE FOR MEDICAL PRACTICE
51 DISCLOSURE; TO IMPOSE POWERS AND DUTIES ON THE STATE BOARD OF
52 MEDICAL LICENSURE AND THE STATE DEPARTMENT OF HEALTH; TO PROVIDE

53 FOR PENALTIES; TO AMEND SECTION 73-43-11, MISSISSIPPI CODE OF
54 1972, IN CONFORMITY; TO AMEND SECTION 73-25-27, MISSISSIPPI CODE
55 OF 1972, TO PROVIDE THE RIGHT FOR HARMED PATIENTS TO ATTEND
56 DISCIPLINARY PROCEEDINGS INVOLVING THE PHYSICIAN RESPONSIBLE FOR
57 THE HARM; TO REQUIRE STATEWIDE PUBLICATION OF RECALL NOTICES; TO
58 ALLOW BENCH TRIALS IN CERTAIN CASES IF THE PARTIES AGREE; TO
59 PROVIDE FOR A DIRECT ACTION AGAINST AN INSURER; TO PROVIDE THAT
60 POLICY SHALL CONTAIN PROVISIONS THAT INSOLVENCY OR BANKRUPTCY OF
61 THE INSURED SHALL NOT RELEASE THE INSURER FROM LIABILITY; TO
62 PROVIDE THAT ACTIONS MAY BE BROUGHT AGAINST THE INSURER ALONE IN
63 CERTAIN SITUATIONS; TO PROVIDE THAT THE INSURANCE POLICY SHALL BE
64 ADMISSIBLE INTO EVIDENCE; TO PROVIDE THAT ALL MALPRACTICE CLAIMS
65 SHALL BE REVIEWED BY A MEDICAL REVIEW PANEL; TO ALLOW PARTIES TO
66 MUTUALLY AGREE TO OPT OUT OF THIS REQUIREMENT; TO ESTABLISH THE
67 MEMBERSHIP REVIEW PANEL; TO PROVIDE WHAT EVIDENCE MAY BE
68 CONSIDERED BY THE PANEL; TO PROVIDE THE FORM OF THE DECISION; TO
69 PROVIDE FOR PANELIST IMMUNITY AND COMPENSATION; TO PROVIDE THAT
70 THE LOSING PARTY SHALL PAY ATTORNEY FEES TO THE PREVAILING PARTY
71 UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 11-46-19,
72 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED
73 PURPOSES.

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

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

77 11-11-3. (1) (a) (i) Civil actions of which the circuit
78 court has original jurisdiction shall be commenced in the county
79 where the defendant resides, or, if a corporation, in the county
80 of its principal place of business, or in the county where a
81 substantial alleged act or omission occurred or where a
82 substantial event that caused the injury occurred.

83 (ii) Civil actions alleging a defective product
84 may also be commenced in the county where the plaintiff obtained
85 the product.

86 (b) If venue in a civil action against a nonresident
87 defendant cannot be asserted under paragraph (a) of this
88 subsection (1), a civil action against a nonresident may be
89 commenced in the county where the plaintiff resides or is
90 domiciled.

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

95 **SECTION 2.** Section 11-1-60, Mississippi Code of 1972, is
96 amended as follows:

97 11-1-60. (1) For the purposes of this section, the
98 following words and phrases shall have the meanings ascribed
99 herein unless the context clearly requires otherwise:

100 (a) "Noneconomic damages" means subjective,
101 nonpecuniary damages arising from death, pain, suffering,
102 inconvenience, mental anguish, worry, emotional distress, loss of
103 society and companionship, loss of consortium, bystander injury,
104 physical impairment, injury to reputation, humiliation,
105 embarrassment, loss of the enjoyment of life, hedonic damages,
106 other nonpecuniary damages, and any other theory of damages such
107 as fear of loss, illness or injury. The term "noneconomic
108 damages" shall not include damages for disfigurement, nor does it
109 include punitive or exemplary damages.

110 (b) "Actual economic damages" means objectively
111 verifiable pecuniary damages arising from medical expenses and
112 medical care, rehabilitation services, custodial care,
113 disabilities, loss of earnings and earning capacity, loss of
114 income, burial costs, loss of use of property, costs of repair or
115 replacement of property, costs of obtaining substitute domestic
116 services, loss of employment, loss of business or employment
117 opportunities, and other objectively verifiable monetary losses.

118 * * *

119 (2) (a) In any cause of action filed on or after July 1,
120 2004, for injury based on malpractice or breach of standard of
121 care against a provider of health care, including institutions for
122 the aged or infirm, in the event the trier of fact finds the
123 defendant liable, they shall not award the plaintiff more than
124 Five Hundred Thousand Dollars (\$500,000.00) for noneconomic
125 damages.

126 (b) In any civil action filed on or after July 1, 2004,
127 other than those actions described in paragraph (a) of this

128 subsection, in the event the trier of fact finds the defendant
129 liable, they shall not award the plaintiff more than the following
130 for noneconomic damages:

131 (i) For claims for causes of action filed on or
132 after July 1, 2004, but before July 1, 2011, the sum of Four
133 Million Dollars (\$4,000,000.00);

134 (ii) For claims for causes of action filed on or
135 after July 1, 2011, but before July 1, 2017, the sum of Six
136 Million Dollars (\$6,000,000.00);

137 (iii) For claims for causes of action filed on or
138 after July 1, 2017, the sum of Eight Million Dollars
139 (\$8,000,000.00).

140 It is the intent of this section to limit all noneconomic
141 damages to the above.

142 (c) The trier of fact shall not be advised of the
143 limitations imposed by this subsection (2) and the judge shall
144 appropriately reduce any award of noneconomic damages that exceeds
145 the applicable limitation.

146 (3) The limitation on noneconomic damages set forth in
147 subsection (2) shall not apply in cases where the judge determines
148 that a jury may impose punitive damages.

149 (4) Nothing in this section shall be construed to impose a
150 limitation on damages for disfigurement or actual economic
151 damages.

152 **SECTION 3.** Section 11-1-63, Mississippi Code of 1972, is
153 brought forward as follows:

154 11-1-63. Subject to the provisions of Section 11-1-64, in
155 any action for damages caused by a product except for commercial
156 damage to the product itself:

157 (a) The manufacturer or seller of the product shall not
158 be liable if the claimant does not prove by the preponderance of
159 the evidence that at the time the product left the control of the
160 manufacturer or seller:

161 (i) 1. The product was defective because it
162 deviated in a material way from the manufacturer's specifications
163 or from otherwise identical units manufactured to the same
164 manufacturing specifications, or

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

167 3. The product was designed in a defective
168 manner, or

169 4. The product breached an express warranty
170 or failed to conform to other express factual representations upon
171 which the claimant justifiably relied in electing to use the
172 product; and

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

175 (iii) The defective and unreasonably dangerous
176 condition of the product proximately caused the damages for which
177 recovery is sought.

178 (b) A product is not defective in design or formulation
179 if the harm for which the claimant seeks to recover compensatory
180 damages was caused by an inherent characteristic of the product
181 which is a generic aspect of the product that cannot be eliminated
182 without substantially compromising the product's usefulness or
183 desirability and which is recognized by the ordinary person with
184 the ordinary knowledge common to the community.

185 (c) (i) In any action alleging that a product is
186 defective because it failed to contain adequate warnings or
187 instructions pursuant to paragraph (a)(i)2 of this section, the
188 manufacturer or seller shall not be liable if the claimant does
189 not prove by the preponderance of the evidence that at the time
190 the product left the control of the manufacturer or seller, the
191 manufacturer or seller knew or in light of reasonably available
192 knowledge should have known about the danger that caused the

193 damage for which recovery is sought and that the ordinary user or
194 consumer would not realize its dangerous condition.

195 (ii) An adequate product warning or instruction is
196 one that a reasonably prudent person in the same or similar
197 circumstances would have provided with respect to the danger and
198 that communicates sufficient information on the dangers and safe
199 use of the product, taking into account the characteristics of,
200 and the ordinary knowledge common to an ordinary consumer who
201 purchases the product; or in the case of a prescription drug,
202 medical device or other product that is intended to be used only
203 under the supervision of a physician or other licensed
204 professional person, taking into account the characteristics of,
205 and the ordinary knowledge common to, a physician or other
206 licensed professional who prescribes the drug, device or other
207 product.

208 (d) In any action alleging that a product is defective
209 pursuant to paragraph (a) of this section, the manufacturer or
210 seller shall not be liable if the claimant (i) had knowledge of a
211 condition of the product that was inconsistent with his safety;
212 (ii) appreciated the danger in the condition; and (iii)
213 deliberately and voluntarily chose to expose himself to the danger
214 in such a manner to register assent on the continuance of the
215 dangerous condition.

216 (e) In any action alleging that a product is defective
217 pursuant to paragraph (a)(i)2 of this section, the manufacturer or
218 seller shall not be liable if the danger posed by the product is
219 known or is open and obvious to the user or consumer of the
220 product, or should have been known or open and obvious to the user
221 or consumer of the product, taking into account the
222 characteristics of, and the ordinary knowledge common to, the
223 persons who ordinarily use or consume the product.

224 (f) In any action alleging that a product is defective
225 because of its design pursuant to paragraph (a)(i)3 of this

226 section, the manufacturer or product seller shall not be liable if
227 the claimant does not prove by the preponderance of the evidence
228 that at the time the product left the control of the manufacturer
229 or seller:

230 (i) The manufacturer or seller knew, or in light
231 of reasonably available knowledge or in the exercise of reasonable
232 care should have known, about the danger that caused the damage
233 for which recovery is sought; and

234 (ii) The product failed to function as expected
235 and there existed a feasible design alternative that would have to
236 a reasonable probability prevented the harm. A feasible design
237 alternative is a design that would have to a reasonable
238 probability prevented the harm without impairing the utility,
239 usefulness, practicality or desirability of the product to users
240 or consumers.

241 (g) (i) The manufacturer of a product who is found
242 liable for a defective product pursuant to paragraph (a) shall
243 indemnify a product seller for the costs of litigation, any
244 reasonable expenses, reasonable attorney's fees and any damages
245 awarded by the trier of fact unless the seller exercised
246 substantial control over that aspect of the design, testing,
247 manufacture, packaging or labeling of the product that caused the
248 harm for which recovery of damages is sought; the seller altered
249 or modified the product, and the alteration or modification was a
250 substantial factor in causing the harm for which recovery of
251 damages is sought; the seller had actual knowledge of the
252 defective condition of the product at the time he supplied same;
253 or the seller made an express factual representation about the
254 aspect of the product which caused the harm for which recovery of
255 damages is sought.

256 (ii) Subparagraph (i) shall not apply unless the
257 seller has given prompt notice of the suit to the manufacturer

258 within ninety (90) days of the service of the complaint against
259 the seller.

260 (h) Nothing in this section shall be construed to
261 eliminate any common law defense to an action for damages caused
262 by a product.

263 **SECTION 4.** Section 11-1-64, Mississippi Code of 1972, is
264 brought forward as follows:

265 11-1-64. (1) A defendant whose liability is based solely on
266 his status as a seller in the stream of commerce may be dismissed
267 from a products liability claim as provided in this section.

268 (2) This section shall apply to any products liability claim
269 in which another defendant, including the manufacturer, is
270 properly before the court and from whom recovery may be had for
271 plaintiff's claim.

272 (3) A defendant may move for dismissal under this section
273 within one hundred eighty (180) days from the date an answer or
274 other responsive pleading is due to be filed or at such later time
275 as may be permitted by the court for good cause shown. The motion
276 shall be accompanied by an affidavit which shall be made under
277 oath and shall state that the defendant is aware of no facts or
278 circumstances upon which a verdict might be reached against him,
279 other than his status as a seller in the stream of commerce.

280 (4) The parties shall have sixty (60) days in which to
281 conduct discovery on the issues raised in the motion and
282 affidavit. The court for good cause shown, may extend the time
283 for discovery, and may enter a protective order pursuant to the
284 rules of civil procedure regarding the scope of discovery on other
285 issues.

286 (5) Any party may move for a hearing on a motion to dismiss
287 under this section. If the requirements of subsections (2) and
288 (3) of this section are met, and no party comes forward at such a
289 hearing with evidence of facts which would render the defendant
290 seeking dismissal under this section liable on some basis other

291 than his status as a seller in the stream of commerce, the court
292 shall dismiss without prejudice the claim as to that defendant.

293 (6) No order of dismissal under this section shall operate
294 to divest a court of venue or jurisdiction otherwise proper at the
295 time the action was commenced. A defendant dismissed pursuant to
296 this section shall be considered to remain a party to such action
297 only for such purposes.

298 (7) An order of dismissal under this section shall be
299 interlocutory until final disposition of plaintiff's claim.

300 **SECTION 5.** Section 11-1-65, Mississippi Code of 1972, is
301 amended as follows:

302 11-1-65. (1) In any action in which punitive damages are
303 sought:

304 (a) Punitive damages may not be awarded if the claimant
305 does not prove by clear and convincing evidence that the defendant
306 against whom punitive damages are sought acted with actual malice,
307 gross negligence which evidences a willful, wanton or reckless
308 disregard for the safety of others, or committed actual fraud.

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

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

317 (d) The court shall determine whether the issue of
318 punitive damages may be submitted to the trier of fact; and, if
319 so, the trier of fact shall determine whether to award punitive
320 damages and in what amount.

321 (e) In all cases involving an award of punitive
322 damages, the fact finder, in determining the amount of punitive
323 damages, shall consider, to the extent relevant, the following:

324 the defendant's financial condition and net worth; the nature and
325 reprehensibility of the defendant's wrongdoing, for example, the
326 impact of the defendant's conduct on the plaintiff, or the
327 relationship of the defendant to the plaintiff; the defendant's
328 awareness of the amount of harm being caused and the defendant's
329 motivation in causing such harm; the duration of the defendant's
330 misconduct and whether the defendant attempted to conceal such
331 misconduct; and any other circumstances shown by the evidence that
332 bear on determining a proper amount of punitive damages. The
333 trier of fact shall be instructed that the primary purpose of
334 punitive damages is to punish the wrongdoer and deter similar
335 misconduct in the future by the defendant and others while the
336 purpose of compensatory damages is to make the plaintiff whole.

337 (f) (i) Before entering judgment for an award of
338 punitive damages the trial court shall ascertain that the award is
339 reasonable in its amount and rationally related to the purpose to
340 punish what occurred giving rise to the award and to deter its
341 repetition by the defendant and others.

342 (ii) In determining whether the award is
343 excessive, the court shall take into consideration the following
344 factors:

345 1. Whether there is a reasonable relationship
346 between the punitive damage award and the harm likely to result
347 from the defendant's conduct as well as the harm that actually
348 occurred;

349 2. The degree of reprehensibility of the
350 defendant's conduct, the duration of that conduct, the defendant's
351 awareness, any concealment, and the existence and frequency of
352 similar past conduct;

353 3. The financial condition and net worth of
354 the defendant; and

355 4. In mitigation, the imposition of criminal
356 sanctions on the defendant for its conduct and the existence of

357 other civil awards against the defendant for the same conduct.

358 (2) The seller of a product other than the manufacturer
359 shall not be liable for punitive damages unless the seller
360 exercised substantial control over that aspect of the design,
361 testing, manufacture, packaging or labeling of the product that
362 caused the harm for which recovery of damages is sought; the
363 seller altered or modified the product, and the alteration or
364 modification was a substantial factor in causing the harm for
365 which recovery of damages is sought; the seller had actual
366 knowledge of the defective condition of the product at the time he
367 supplied same * * *.

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

371 (i) Twenty Million Dollars (\$20,000,000.00) for a
372 defendant with a net worth of more than One Billion Dollars
373 (\$1,000,000,000.00);

374 (ii) Fifteen Million Dollars (\$15,000,000.00) for
375 a defendant with a net worth of more than Seven Hundred Fifty
376 Million Dollars (\$750,000,000.00) but not more than One Billion
377 Dollars (\$1,000,000,000.00);

378 (iii) Five Million Dollars (\$5,000,000.00) for a
379 defendant with a net worth of more than Five Hundred Million
380 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty
381 Million Dollars (\$750,000,000.00);

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

386 (v) Two Million Five Hundred Thousand Dollars
387 (\$2,500,000.00) for a defendant with a net worth of more than
388 Fifty Million Dollars (\$50,000,000.00) but not more than One
389 Hundred Million Dollars (\$100,000,000.00); or

390 (vi) Two percent (2%) of the defendant's net worth
391 for a defendant with a net worth of Fifty Million Dollars
392 (\$50,000,000.00) or less.

393 (b) For the purposes of determining the defendant's net
394 worth in paragraph (a), the amount of the net worth shall be
395 determined in accordance with Generally Accepted Accounting
396 Principles.

397 (c) The limitation on the amount of punitive damages
398 imposed by this subsection (3) shall not be disclosed to the trier
399 of fact, but shall be applied by the court to any punitive damages
400 verdict.

401 (d) The limitation on the amount of punitive damages
402 imposed by this subsection (3) shall not apply to actions brought
403 for damages or an injury resulting from an act or failure to act
404 by the defendant:

405 (i) If the defendant was convicted of a felony
406 under the laws of this state or under federal law which caused the
407 damages or injury; or

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

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

414 (4) Nothing in this section shall be construed as creating a
415 right to an award of punitive damages or to limit the duty of the
416 court, or the appellate courts, to scrutinize all punitive damage
417 awards, ensure that all punitive damage awards comply with
418 applicable procedural, evidentiary and constitutional
419 requirements, and to order remittitur where appropriate.

420 * * *

421 **SECTION 6.** Section 11-1-66, Mississippi Code of 1972, is
422 amended as follows:

423 11-1-66. (1) No owner, occupant, lessee or managing agent
424 of property shall be civilly liable for the criminal acts of a
425 third party, unless such owner, occupant, lessee or managing agent
426 knew or, with the exercise of reasonable care, should have known
427 of the risk of criminal conduct on such property and the failure
428 to exercise reasonable care to deter such foreseeable conduct is a
429 proximate cause of damages to an individual or entity.

430 (2) No owner, occupant, lessee or managing agent of property
431 shall be liable for the death or injury of an independent
432 contractor or the independent contractor's employees resulting
433 from dangers of which the contractor knew or reasonably should
434 have known.

435 **SECTION 7.** Section 85-5-7, Mississippi Code of 1972, is
436 amended as follows:

437 85-5-7. (1) As used in this section "fault" means an act or
438 omission of a person which is a proximate cause of injury or death
439 to another person or persons, damages to property, tangible or
440 intangible, or economic injury, including, but not limited to,
441 negligence, malpractice, strict liability, absolute liability or
442 failure to warn. "Fault" shall not include any tort which results
443 from an act or omission committed with a specific wrongful intent.

444 * * *

445 (2) Except as otherwise provided in subsection (4) of this
446 section, in any civil action based on fault, the liability for
447 damages caused by two (2) or more persons shall be several only,
448 and not joint and several and a joint tort-feasor shall be liable
449 only for the amount of damages allocated to him in direct
450 proportion to his percentage of fault. In assessing percentages
451 of fault an employer and the employer's employee or a principal
452 and the principal's agent shall be considered as one (1) defendant
453 when the liability of such employer or principal has been caused
454 by the wrongful or negligent act or omission of the employee or
455 agent.

456 * * *

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

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

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

469 * * *

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

473 **SECTION 8.** Section 13-5-23, Mississippi Code of 1972, is
474 amended as follows:

475 13-5-23. (1) All qualified persons shall be liable to serve
476 as jurors, unless excused by the court for one (1) of the
477 following causes:

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

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

483 * * *

484 (2) An excuse of illness under subsection (1)(a) of this
485 section may be made to the clerk of court outside of open court by
486 providing the clerk with * * * a certificate of a licensed
487 physician * * *, stating that the juror is ill and is unfit for
488 jury service, in which case the clerk may excuse the juror. If

489 the excuse of illness is not supported by a physician's
490 certificate, a judge of the court for which the individual was
491 called to jury service shall decide whether to excuse an
492 individual under subsection (1)(a) of this section.

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

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

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

504 (iii) Suffer physical hardship that would result
505 in illness or disease.

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

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

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

518 (e) A person asking a judge to grant an excuse under
519 subsection (1)(b) of this section shall be required to provide the
520 judge with documentation such as, but not limited to, federal and
521 state income tax returns or other information which verifies

522 income, medical statements from licensed physicians, proof of
523 dependency or guardianship and similar documents, which the judge
524 finds to clearly support the request to be excused. Failure to
525 provide satisfactory documentation shall result in a denial of the
526 request to be excused. Any documentation produced under this
527 paragraph shall not be a public record.

528 (4) After two (2) years, a person excused from jury service
529 shall become eligible once again for qualification as a juror
530 unless the person was excused from service permanently. A person
531 is excused from jury service permanently only when the deciding
532 judge determines that the underlying grounds for being excused are
533 of a permanent nature.

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

538 **SECTION 9.** The following provision shall be codified as
539 Section 13-5-24, Mississippi Code of 1972:

540 13-5-24. (1) Notwithstanding any other provisions of this
541 chapter, individuals scheduled to appear for jury service have the
542 right to postpone the date of their initial appearance for jury
543 service one (1) time only. Postponements shall be granted upon
544 request, provided that:

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

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

550 (c) Prior to the grant of a postponement with the
551 concurrence of the clerk of the court, the prospective juror fixes
552 a date certain to appear for jury service that is within the next
553 two (2) terms of court but not more than twelve (12) months after

554 the date on which the prospective juror originally was called to
555 serve and on which date the court will be in session.

556 (2) A subsequent request to postpone jury service may be
557 approved by a judicial officer only in the event of an extreme
558 emergency, such as a death in the family, sudden illness, or a
559 natural disaster or a national emergency in which the prospective
560 juror is personally involved, that could not have been anticipated
561 at the time the initial postponement was granted. Prior to the
562 grant of a second postponement, the prospective juror must fix a
563 date certain on which the individual will appear for jury service
564 within twelve (12) months of the postponement on a date when the
565 court will be in session.

566 **SECTION 10.** Section 13-5-25, Mississippi Code of 1972, is
567 amended as follows:

568 13-5-25. Every citizen over sixty-five (65) years of age,
569 and everyone who has served on the regular panel as a juror in the
570 actual trial of one or more litigated cases within two (2) years,
571 shall be exempt from service if he claims the privilege * * *. No
572 qualified juror shall be excluded because of any such reasons, but
573 the same shall be a personal privilege to be claimed by any person
574 selected for jury duty. Any citizen over sixty-five (65) years of
575 age may claim this personal privilege outside of open court by
576 providing the clerk of court with information that allows the
577 clerk to determine the validity of the claim.

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

582 **SECTION 11.** Section 13-5-28, Mississippi Code of 1972, is
583 amended as follows:

584 13-5-28. If a grand, petit or other jury is ordered to be
585 drawn, the clerk thereafter shall cause each person drawn for jury
586 service to be served with a summons, either personally or by mail,

587 addressed to him at his usual residence, business or post office
588 address, requiring him to report for jury service at a specified
589 time and place. The summons shall include instructions to the
590 potential jurors that explain, in layman's terms, the provisions
591 of Sections 13-5-23 and 13-5-99.

592 **SECTION 12.** Section 13-5-34, Mississippi Code of 1972, is
593 amended as follows:

594 13-5-34. (1) A person summoned for jury service who fails
595 to appear or to complete jury service as directed, and who has
596 failed to obtain a postponement in compliance with the provisions
597 for requesting a postponement, or who fails to appear on the date
598 set pursuant to Section 13-5-24 shall be ordered by the court to
599 appear forthwith and show cause for his failure to comply with the
600 summons. If he fails to show good cause for noncompliance with
601 the summons he is in civil contempt of court and * * * may be
602 fined not more than Five Hundred Dollars (\$500.00) or imprisoned
603 not more than three (3) days, or both. The prospective juror may
604 be excused from paying sanctions for good cause shown or in the
605 interest of justice.

606 (2) In addition to, or in lieu of, the fine or imprisonment
607 provided in subsection (1) of this section, the court may order
608 that the prospective juror complete a period of community service
609 for a period no less than if the prospective juror would have
610 completed jury service, and provide proof of completion of this
611 community service to the court.

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

614 13-5-99. (1) It shall be unlawful for any employer or any
615 other person to persuade or attempt to persuade any juror to avoid
616 jury service; to intimidate or to threaten any juror in that
617 respect; or to remove or otherwise subject an employee to adverse
618 employment action as a result of jury service if the employee
619 notifies his or her employer that he or she has been summoned to

620 serve as a juror within a reasonable period of time after receipt
621 of a summons.

622 (2) It shall be unlawful for an employer to require or
623 request an employee to use annual, vacation or sick leave for time
624 spent responding to a summons for jury duty, time spent
625 participating in the jury selection process, or time spent
626 actually serving on a jury. Nothing in this provision shall be
627 construed to require an employer to provide annual, vacation or
628 sick leave to employees under the provisions of this statute who
629 otherwise are not entitled to such benefits under company
630 policies.

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

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

641 **SECTION 14.** Section 25-7-61, Mississippi Code of 1972, is
642 amended as follows:

643 25-7-61. (1) Fees of jurors shall be payable as follows:

644 (a) Grand jurors and petit jurors in the chancery,
645 county, circuit and special eminent domain courts shall be paid an
646 amount to be set by the board of supervisors, not to be less than
647 Twenty-five Dollars (\$25.00) per day and not to be greater than
648 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
649 25-3-41. In the trial of all cases where jurors are in charge of
650 bailiffs and are not permitted to separate, the sheriff with the
651 approval of the trial judge may pay for room and board of jurors
652 on panel for actual time of trial.

653 No grand juror shall receive any compensation except mileage
654 unless he shall have been sworn as provided by Section 13-5-45;
655 and no petit juror except those jurors called on special venires
656 shall receive any compensation authorized under this subsection
657 except mileage unless he shall have been sworn as provided by
658 Section 13-5-71.

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

665 (c) Jurors in the justice courts shall be paid an
666 amount of not less than Ten Dollars (\$10.00) per day and not more
667 than Fifteen Dollars (\$15.00) per day, to be established by the
668 board of supervisors. In all criminal cases in the justice court
669 wherein the prosecution fails, the fees of jurors shall be paid by
670 the county treasurer on order of the board of supervisors on
671 certificate of the county attorney in all counties that have
672 county attorneys, otherwise by the justice court judge.

673 (2) Any juror may return the fees provided as compensation
674 for service as a juror to the county which paid for such person's
675 service as a juror. The fees returned to the county may be
676 earmarked for a particular purpose to be selected by the juror,
677 including:

678 (a) The local public library;

679 (b) Local law enforcement;

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

682 (d) Any other governmental agency.

683 (3) The Administrative Office of Courts shall promulgate
684 rules to establish a Lengthy Trial Fund to be used to provide full

685 or partial wage replacement or wage supplementation to jurors who
686 serve as petit jurors in civil cases for more than ten (10) days.

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

688 (i) The selection and appointment of an
689 administrator for the fund.

690 (ii) Procedures for the administration of the
691 fund, including payments of salaries of the administrator and
692 other necessary personnel.

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

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

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

704 (c) The court may pay replacement or supplemental wages
705 of up to Three Hundred Dollars (\$300.00) per day per juror
706 beginning on the eleventh day of jury service. In addition, for
707 any jurors who qualify for payment by virtue of having served on a
708 jury for more than ten (10) days, the court, upon finding that
709 such service posed a significant financial hardship to a juror,
710 even in light of payments made with respect to jury service after
711 the tenth day, may award replacement or supplemental wages of up
712 to One Hundred Dollars (\$100.00) per day from the fourth to the
713 tenth day of jury service.

714 (d) Any juror who is serving or has served on a jury
715 that qualifies for payment from the Lengthy Trial Fund, provided
716 the service commenced on or after the July 1, 2004, may submit a
717 request for payment from the Lengthy Trial Fund on a form that the

718 administrator provides. Payment shall be limited to the
719 difference between the state-paid jury fee and the actual amount
720 of wages a juror earns, up to the maximum level payable, minus any
721 amount the juror actually receives from the employer during the
722 same time period.

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

728 (ii) The juror also shall be required to submit
729 verification from the employer as to the wage information provided
730 to the administrator, for example, the employee's most recent
731 earnings statement or similar document, prior to initiation of
732 payment from the fund.

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

738 **SECTION 15.** Section 33-1-5, Mississippi Code of 1972, is
739 amended as follows:

740 33-1-5. Any member of the Mississippi National Guard on
741 active duty shall be exempt from jury duty upon presenting a
742 current written statement from his superior officer that such jury
743 service will be likely to interfere with his military duties.

744 **SECTION 16.** Section 41-17-7, Mississippi Code of 1972, which
745 provides for the exemption from jury service of state insane
746 hospital personnel, is repealed.

747 **SECTION 17.** Section 47-5-55, Mississippi Code of 1972, which
748 provides for the exemption from jury service of state correctional
749 system employees and officers, is repealed.

750 **SECTION 18.** The Legislature recognizes the importance of
751 assuring adequate health care services for all Mississippians, and
752 it acknowledges that physicians are a vital component of providing
753 such services. The Legislature finds that because of the makeup
754 of the citizenry of the state and the percentage of citizens who
755 are (a) Medicaid recipients, (b) State and School Employees Health
756 Insurance Plan participants and (c) Children's Health Insurance
757 Program participants, physicians who provide health care services
758 to such individuals are providing an essential public service and
759 that it is in the public interest to provide funding to further
760 address medical malpractice insurance needs of these physicians.

761 **SECTION 19.** Section 83-48-5, Mississippi Code of 1972, is
762 amended as follows:

763 83-48-5. (1) There is created the Medical Malpractice
764 Insurance Availability Plan that shall be funded by the
765 participants in the plan. The plan shall be administered by the
766 Tort Claims Board created under Section 11-46-18.

767 (2) (a) The plan shall provide coverage for medical
768 malpractice to hospitals, institutions for the aged or infirm, or
769 other health care facilities licensed by the State of Mississippi,
770 physicians, nurses or other personnel who are duly licensed to
771 practice in a hospital or other health care facility licensed by
772 the State of Mississippi. Participation in the plan shall be
773 voluntary for any hospital, institution for the aged or infirm, or
774 other health care facilities licensed by the State of Mississippi,
775 physicians, nurses and any other personnel who are duly licensed
776 to practice in a hospital or other health care facility licensed
777 by the State of Mississippi. However, no state entity may
778 participate in the plan. The term "state" as used in this
779 subsection has the meaning ascribed to that term under Section
780 11-46-1. The plan shall make available tail (extended reporting
781 period) coverage for participants of the plan at an additional
782 premium assessment for such coverage. The plan shall make

783 available prior acts extended reporting period coverage
784 (retroactive to the inception date of the physician's last medical
785 malpractice policy) for participants of the plan at an additional
786 premium assessment for such coverage. The board shall encourage
787 participation in the insurance industry market. Any duly licensed
788 qualified Mississippi agent who writes a policy under the plan may
789 receive a commission not to exceed five percent (5%) of the
790 premium assessment as full compensation.

791 (b) The limits of coverage under the plan shall be as
792 follows:

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

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

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

806 (iv) For prior acts extended reporting period
807 coverage, the plan shall provide the same limits of coverage as
808 designated in subparagraphs (i) and (ii) of this paragraph (b).
809 For the purpose of providing funds, in addition to assessments,
810 for prior acts extending reporting period coverage, the
811 Mississippi Tort Claims Board shall use monies in the special fund
812 created under Section 18 of House Bill No. _____, First
813 Extraordinary Session of 2004.

814 (3) Policies may be underwritten based on participant
815 history. All rates applicable to the coverage provided herein

816 shall be on an actuarially sound basis and calculated to be
817 self-supporting. Policies for prior acts extended reporting
818 period coverage shall be underwritten at the lowest premium rates
819 possible on an actuarially sound basis.

820 (4) Every participant in the plan shall:

821 (a) File with the board a written agreement, the form
822 and substance of which shall be determined by the board, signed by
823 a duly authorized representative of the participant, that the
824 participant will provide services to (i) Medicaid recipients, (ii)
825 State and School Employees Health Insurance Plan participants, and
826 (iii) Children's Health Insurance Program participants. The
827 agreement must provide, among other things, that the participant
828 will provide services to Medicaid recipients, State and School
829 Employees Health Insurance Plan participants, and Children's
830 Health Insurance Program participants in a manner that is
831 comparable to the services provided to all other patients and
832 shall be made without balance billing to the patient; and

833 (b) Pay all assessments and premiums established by the
834 board.

835 (5) This chapter shall not preclude any hospital,
836 institution for the aged or infirm, or other health care
837 facilities licensed by the State of Mississippi, physician, nurse
838 or other personnel who are duly licensed to practice in a hospital
839 or other health care facility licensed by the State of Mississippi
840 from procuring medical malpractice insurance from any source other
841 than the plan.

842 (6) Notwithstanding any other provision of this section to
843 the contrary, the Mississippi Tort Claims Board shall use so much
844 of the monies in the special fund created in Section 18 of House
845 Bill No. _____, First Extraordinary Session of 2004, as may be
846 necessary to pay all medical malpractice insurance premiums for
847 not more than an aggregate of twenty-five (25) physicians
848 described in Section 11-46-1(f)(ii).

849 (7) The Tort Claims Board shall have the following powers
850 and duties:

851 (a) To expend money from a loan from the Tort Claims
852 Fund in an amount not to exceed Five Hundred Thousand Dollars
853 (\$500,000.00) for the start-up costs of administering the Medical
854 Malpractice Insurance Availability Plan;

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

856 (c) To charge and collect assessments and fees from
857 participants in the plan;

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

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

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

870 (g) To use monies in the special fund created under
871 Section 18 of House Bill No. _____, First Extraordinary Session of
872 2004, for the purposes provided in subsections (2)(b)(iv) and (6)
873 of this section.

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

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

882 (i) Certification by a qualified actuary that the
883 plan is solvent;
884 (ii) The number of participants in the plan;
885 (iii) The number of claims filed and paid by the
886 plan; and
887 (iv) The amount of all assessments and fees
888 collected from the participants in the plan.

889 (8) Nothing contained in this section shall be construed as
890 repealing, amending or superseding the provisions of any other law
891 and, if the provisions of this section conflict with any other
892 law, then the provisions of such other law shall govern and
893 control to the extent of the conflict.

894 **SECTION 20.** Section 11-46-1, Mississippi Code of 1972, is
895 amended as follows:

896 11-46-1. As used in this chapter the following terms shall
897 have the meanings herein ascribed unless the context otherwise
898 requires:

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

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

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

905 (d) "Department" means the Department of Finance and
906 Administration.

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

909 (f) "Employee" means:

910 (i) Any officer, employee or servant of the State
911 of Mississippi or a political subdivision of the state, including
912 elected or appointed officials and persons acting on behalf of the
913 state or a political subdivision in any official capacity,
914 temporarily or permanently, in the service of the state or a

915 political subdivision whether with or without compensation. The
916 term "employee" shall not mean a person or other legal entity
917 while acting in the capacity of an independent contractor under
918 contract to the state or a political subdivision; provided,
919 however, that for purposes of the limits of liability provided for
920 in Section 11-46-15, the term "employee" shall include physicians
921 under contract to provide health services with the State Board of
922 Health, the State Board of Mental Health or any county or
923 municipal jail facility while rendering services under such
924 contract. The term "employee" shall also include any physician,
925 dentist or other health care practitioner employed by the
926 University of Mississippi Medical Center (UMMC) and its
927 departmental practice plans who is a faculty member and provides
928 health care services only for patients at UMMC or its affiliated
929 practice sites. The term "employee" shall also include any
930 physician, dentist or other health care practitioner employed by
931 any university under the control of the Board of Trustees of State
932 Institutions of Higher Learning who practices only on the campus
933 of any university under the control of the Board of Trustees of
934 State Institutions of Higher Learning. The term "employee" shall
935 also include any physician, dentist or other health care
936 practitioner employed by the State Veterans Affairs Board and who
937 provides health care services for patients for the State Veterans
938 Affairs Board. The term "employee" shall also include Mississippi
939 Department of Human Services licensed foster parents for the
940 limited purposes of coverage under the Tort Claims Act as provided
941 in Section 11-46-8. For the purposes of the limits of liability
942 provided for in Section 11-46-15 and for no other purpose under
943 this chapter, the term "employee" also shall include any physician
944 who provides health care services to Medicaid recipients, State
945 and School Employees Health Insurance Plan participants and
946 Children's Health Insurance Program participants, provided that at
947 least thirty-five percent (35%) of the physician's patients, as

948 determined by the board, are Medicaid recipients, however, not to
949 exceed one hundred twenty-five (125) physicians; and

950 (ii) Any retired physician who provides volunteer
951 unpaid health care services to any public entity or private
952 entity. For the purposes of this subparagraph (ii), "public
953 entity" means any agency, department, institution, instrumentality
954 or political subdivision of the state, or any agency, department,
955 institution or instrumentality of any political subdivision of the
956 state; and "private entity" means any business, organization,
957 corporation, association or other legal entity which is not a
958 public entity.

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

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

964 (i) "Political subdivision" means any body politic or
965 body corporate other than the state responsible for governmental
966 activities only in geographic areas smaller than that of the
967 state, including, but not limited to, any county, municipality,
968 school district, community hospital as defined in Section
969 41-13-10, Mississippi Code of 1972, airport authority or other
970 instrumentality thereof, whether or not such body or
971 instrumentality thereof has the authority to levy taxes or to sue
972 or be sued in its own name.

973 (j) "State" means the State of Mississippi and any
974 office, department, agency, division, bureau, commission, board,
975 institution, hospital, college, university, airport authority or
976 other instrumentality thereof, whether or not such body or
977 instrumentality thereof has the authority to levy taxes or to sue
978 or be sued in its own name.

979 (k) "Law" means all species of law including, but not
980 limited to, any and all constitutions, statutes, case law, common

981 law, customary law, court order, court rule, court decision, court
982 opinion, court judgment or mandate, administrative rule or
983 regulation, executive order, or principle or rule of equity.

984 **SECTION 21.** There is created in the State Treasury a special
985 fund to the credit of the Mississippi Tort Claims Board, which
986 shall be comprised of any funds that may be made available for the
987 fund by the Legislature. Monies in the fund shall be expended by
988 the Mississippi Tort Claims Board, upon appropriation by the
989 Legislature, only for the purpose of providing additional funds
990 for prior acts extended reporting period coverage as provided in
991 Section 83-48-5 and for paying the medical malpractice premiums
992 for those physicians described in Section 11-46-1(f)(ii) as
993 provided for in Section 83-48-5. Unexpended amounts remaining in
994 the special fund at the end of a fiscal year shall not lapse into
995 the State General Fund, and any interest earned or investment
996 earnings on amounts in the special fund shall be deposited to the
997 credit of the special fund.

998 **SECTION 22.** The Tort Claims Board shall develop methods and
999 promulgate rules and regulations to verify whether a physician
1000 meets the percentage requirement under Section 11-46-1(f) to
1001 qualify as an employee. There is created an advisory council to
1002 assist the Mississippi Tort Claims Board in determining whether a
1003 physician meets the percentage requirement under Section
1004 11-46-1(f) to qualify as an employee. The advisory council shall
1005 be composed of the Executive Director of the Mississippi Medical
1006 Association or his designee; the President of the Mississippi
1007 Medical and Surgical Association or his designee; the
1008 administrator of the Mississippi Tort Claims Board or his
1009 designee; two (2) physicians appointed by the Lieutenant Governor;
1010 two (2) physicians appointed by the Speaker of the House of
1011 Representatives and three (3) nonphysician members, one (1) from
1012 each Supreme Court district, appointed by the Governor.

1013 **SECTION 23.** That any medical provider or hospital or nursing
1014 home or other medical facility shall charge no more than the
1015 following amounts to patients or their representatives for
1016 photocopying any patient's records: Twenty Dollars (\$20.00) for
1017 pages one (1) through twenty (20); One Dollar (\$1.00) per page for
1018 the next eighty (80) pages; Fifty Cents (50¢) per page for all
1019 pages thereafter. Ten percent (10%) of the total charge may be
1020 added for postage and handling. Fifteen Dollars (\$15.00) may be
1021 recovered by the medical provider or hospital or nursing home or
1022 other medical facility for retrieving medical records in archives
1023 at a location off the premises where the facility/office is
1024 located.

1025 **SECTION 24.** **Short title.**

1026 Sections 24 through 33 of this act shall be known and may be
1027 cited as the Medical Practice Disclosure Act.

1028 **SECTION 25.** **Legislative intent.**

1029 The State of Mississippi hereby recognizes the necessity of
1030 allowing individuals to make informed and educated choices
1031 regarding health care services and the essential need to provide
1032 information to facilitate these important decisions. It further
1033 recognizes that public disclosure of certain health care
1034 information would lower the cost of health care through the use of
1035 the most appropriate provider and improve the quality of health
1036 care services by mandating the reporting of information regarding
1037 health care providers.

1038 It is the intention of the Legislature to establish a
1039 procedure by which the general public may obtain essential and
1040 basic information concerning potential health care providers,
1041 while ensuring the accuracy and disclosure of all relevant
1042 information that would enable individuals to informatively select
1043 their health care provider.

1044 **SECTION 26.** **Collection of information.**

1045 (1) The State Board of Medical Licensure (board) and the
1046 State Department of Health (department) shall collect for each
1047 physician licensed or otherwise practicing medicine in the State
1048 of Mississippi the following information, in a format developed by
1049 the department that shall be available for dissemination to the
1050 public:

1051 (a) A description of any criminal convictions for
1052 felonies and violent misdemeanors as determined by the department.
1053 For the purposes of this paragraph, a person shall be deemed to be
1054 convicted of a crime if that person pleaded guilty or if that
1055 person was found or adjudged guilty by a court of competent
1056 jurisdiction.

1057 (b) A description of any charges to which a physician
1058 pleads nolo contendere or where sufficient facts of guilt were
1059 found and the matter was continued without a finding by a court of
1060 competent jurisdiction.

1061 (c) A description of any final disciplinary actions
1062 taken by the State Board of Medical Licensure.

1063 (d) A description of any final disciplinary actions by
1064 licensing boards in other states or reported in the National
1065 Practitioner Data Bank.

1066 (e) A description of revocation or involuntary
1067 restriction of hospital privileges that have been taken by a
1068 hospital's governing body and any other official of a hospital
1069 after procedural due process has been afforded, or the resignation
1070 from or nonrenewal of medical staff membership or the restriction
1071 of privileges at a hospital taken in lieu of or in settlement of a
1072 pending disciplinary case.

1073 (f) Notwithstanding any law to the contrary, all
1074 medical malpractice court judgments and all medical malpractice
1075 arbitration awards in which a payment is awarded to a complaining
1076 party and all settlements of medical malpractice claims in which a
1077 payment is made to a complaining party. Settlement of a claim may

1078 occur for a variety of reasons which do not necessarily reflect
1079 negatively on the professional competence or conduct of the
1080 physician. A payment in settlement of a medical malpractice
1081 action or claim should not be construed as creating a presumption
1082 that medical malpractice has occurred.

1083 (g) All civil court awards or settlements arising from
1084 allegations of sexual misconduct filed by patients, employees or
1085 hospital staff.

1086 (h) A paragraph describing the malpractice experience
1087 of each medical specialty and an explanation that some high risk
1088 specialties experience more malpractice claims than less risky
1089 specialties. This information shall be updated on an annual basis
1090 to reflect the most recent malpractice claims experience of each
1091 specialty.

1092 (i) Names of medical schools and dates of graduation.

1093 (j) Graduate medical education.

1094 (k) Specialty board certification(s).

1095 (l) Number of years in practice.

1096 (m) Name of hospitals where the physician has
1097 privileges.

1098 (n) Appointments to medical school faculties and
1099 indication as to whether the physician has a responsibility for
1100 graduate medical education.

1101 (o) Information regarding publications in peer-reviewed
1102 medical literature.

1103 (p) Information regarding professional or community
1104 service activities and awards.

1105 (q) The location of the physician's primary practice
1106 location.

1107 (r) The indication of any translating services that may
1108 be available at the physician's primary practice location.

1109 (s) An indication of whether the physician participates
1110 in the Medicaid program.

1111 (2) The department shall provide each physician with a copy
1112 of that physician's profile prior to the release to the public.

1113 (3) A physician shall be provided a reasonable time, not to
1114 exceed sixty (60) days, to correct factual inaccuracies or
1115 omissions that may appear in the profile.

1116 (4) (a) A physician may petition the board for permission
1117 to temporarily omit certain information for a period not to exceed
1118 one (1) year.

1119 (b) If the physician demonstrates to the board that
1120 disclosure of the information would represent an undue risk of
1121 injury to the physician or the property of the physician, the
1122 board may grant the request and the information shall be withheld
1123 until such time as the situation is resolved, based on the
1124 presentation of evidence to the board, for a period not to exceed
1125 one (1) year.

1126 (5) The board or the department shall not disclose any
1127 pending malpractice claims to the public, and nothing in this
1128 section shall be construed to prohibit the board or the department
1129 from investigating and disciplining a physician on the basis of
1130 pending medical malpractice claim information obtained under this
1131 act.

1132 **SECTION 27. Report of criminal convictions and pleas of nolo**
1133 **contendere.**

1134 (1) The clerk of any court in which a physician is convicted
1135 of any crime or in which any unregistered practitioner is
1136 convicted of holding himself out as a practitioner of medicine or
1137 of practicing medicine shall, within one (1) week thereafter,
1138 report the same to the State Medical Licensure Board, together
1139 with a copy of the court proceedings in the case.

1140 (2) For the purposes of this section, a person shall be
1141 deemed to be convicted of a crime if he pleaded guilty or was
1142 found or adjudged guilty by a court of competent jurisdiction.

1143 (3) Upon review, the State Board of Medical Licensure shall
1144 provide the information to the department for purposes consistent
1145 with this act.

1146 (4) If a physician pleads nolo contendere to charges or
1147 where sufficient facts of guilt were found and the matter was
1148 continued without a finding by a court of competent jurisdiction,
1149 the clerk shall, within one (1) week thereafter, report the same
1150 to the Medical Licensure Board, together with a copy of the court
1151 proceedings in the case. Upon review, the Medical Licensure Board
1152 shall provide the information to the department for purposes
1153 consistent with this act.

1154 **SECTION 28. Reports to hospitals and health care facilities.**

1155 (1) Each licensed hospital or health care facility shall
1156 report to the board and the department if the hospital or facility
1157 denies, restricts, revokes or fails to renew staff privileges or
1158 accepts the resignation of a physician for any reason related to
1159 the physician's competence to practice medicine or for any other
1160 reason related to a complaint or allegation regarding any
1161 violation of law, regulation, rule or bylaw of the hospital or
1162 facility regardless of whether the complaint or allegation
1163 specifically states a violation of a specific law, regulation,
1164 rule or bylaw. The report shall be filed within thirty (30) days
1165 of the occurrence of the reportable action and include details
1166 regarding the nature and circumstances of the action, its date and
1167 the reasons for it.

1168 (2) Each licensed hospital or health care facility shall
1169 file an annual disciplinary report with the board no later than
1170 January 31 and shall send the report by certified or registered
1171 mail. The report shall summarize the action reports submitted for
1172 the previous calendar year and shall be signed under oath. If the
1173 hospital or facility submitted no action reports for the previous
1174 calendar year, then the report required by this subsection shall
1175 state that no action reports were required.

1176 (3) No hospital, health care facility or person reporting
1177 information to the board or the department under this section
1178 shall be liable to the physician referenced in the report for
1179 making the report, provided that the report is made in good faith
1180 and without malice.

1181 **SECTION 29. Reports of disciplinary action by professional**
1182 **medical organizations.**

1183 (1) A professional medical association, society, body,
1184 professional standards review organization or similarly
1185 constituted professional organization, whether or not such
1186 association, society, body or organization is local, regional,
1187 state, national or international in scope, shall report to the
1188 Medical Licensure Board the disciplinary action taken against any
1189 physician. Such report of disciplinary action shall be filed with
1190 the board within thirty (30) days of such disciplinary action,
1191 shall be in writing and shall be mailed to the board by certified
1192 or registered mail.

1193 (2) As used in this section, the term "disciplinary action"
1194 includes, but is not limited to, revocation, suspension, censure,
1195 reprimand, restriction, nonrenewal, denial or restriction of
1196 privileges or a resignation shall be reported only when the
1197 resignation or the denial or restriction of privileges is related
1198 in any way to:

1199 (a) The physician's competence to practice medicine; or

1200 (b) A complaint or allegation regarding any violation
1201 of law or regulation, including, but not limited to, the
1202 regulations of the department or the Medical Licensure Board or
1203 hospital, health care facility or professional medical association
1204 bylaws, whether or not the complaint or allegation specifically
1205 cites violation of a specified law, regulation or by law.

1206 **SECTION 30. Reports by insurers of malpractice claims or**
1207 **actions.**

1208 (1) Every insurer or risk management organization which
1209 provides professional liability insurance to a physician shall
1210 report to the department any claim or action for damages for
1211 personal injuries alleged to have been caused by error, omission
1212 or negligence in the performance of the physician's professional
1213 services where the claim resulted in:

1214 (a) Final judgment in any amount;

1215 (b) Settlement in any amount; or

1216 (c) Final disposition not resulting in payment on
1217 behalf of the insured.

1218 (2) Reports shall be filed with the board no later than
1219 thirty (30) days following the occurrence of any event listed
1220 under this section.

1221 (3) The reports shall be in writing on a form prescribed by
1222 the department and shall contain the following information.

1223 (a) The name, address, specialty coverage and policy
1224 number of the physician against whom the claim is made.

1225 (b) The name, address and age of the claimant or
1226 plaintiff.

1227 (c) The nature and substance of the claim.

1228 (d) The date when and place where the claim arose.

1229 (e) The amounts paid, if any, and the date, manner of
1230 disposition, judgment and settlement.

1231 (f) The date and reason for final disposition, if no
1232 judgment or settlement.

1233 (g) Such additional information as the department shall
1234 require. No insurer or its agents or employees shall be liable in
1235 any cause of action arising from reporting to the department as
1236 required in this section.

1237 **SECTION 31. Reports by physicians of settlements or**
1238 **arbitration awards.**

1239 (1) A physician who does not possess professional liability
1240 insurance shall report to the department every settlement or

1241 arbitration award of a claim or action for damages for death or
1242 personal injury caused by negligence, error or omission in
1243 practice, or the unauthorized rendering of professional services
1244 by the physician. The report shall be made within thirty (30)
1245 days after the settlement agreement has been reduced to writing or
1246 thirty (30) days after service of the arbitration award on the
1247 parties as long as it is signed by all the parties.

1248 (2) (a) Except as otherwise provided in this section, a
1249 physician who fails to comply with the provisions of this section
1250 shall be subject to a civil penalty of not more than Five Hundred
1251 Dollars (\$500.00).

1252 (b) A physician who makes a knowing or intentional
1253 failure to comply with the provisions of this section, or
1254 conspires or colludes not to comply with the provisions of this
1255 section, or hinders or impedes any other person in such
1256 compliance, shall be subject to a civil penalty of not less than
1257 Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand
1258 Dollars (\$50,000.00).

1259 **SECTION 32. Public access to information.**

1260 (1) Effective July 1, 2004, a fee of not more than Twenty
1261 Dollars (\$20.00) shall be assessed to all physicians, and the fee
1262 shall be collected by the department every two (2) years to offset
1263 the costs associated with this act.

1264 (2) The department shall make available to the public, upon
1265 request by any person or entity and upon payment of a reasonable
1266 copy charge not to exceed One Dollar (\$1.00) per page, the
1267 information compiled by the board in Section 26 of this act.

1268 (3) Each physician shall make available to the public, free
1269 of charge, information compiled by the board in Section 26 of this
1270 act. All physicians shall conspicuously post at their primary
1271 place of practice a notice stating, "free background information
1272 available upon request."

1273 (4) The department shall disseminate information of Section
1274 26 of this act by posting the information on the state's website
1275 on the Internet. The fees collected under subsection (1) may be
1276 used to pay for the expenses of complying with this subsection.

1277 **SECTION 33. Rules and regulations.**

1278 The board and the department shall in the manner provided by
1279 law promulgate the rules and regulations necessary to carry out
1280 the provisions of this act, including, but not limited to, the
1281 exchange of information between the board and the department and
1282 other relevant state agencies, insurance carriers, hospitals and
1283 judicial administrative offices.

1284 **SECTION 34.** Section 73-43-11, Mississippi Code of 1972, is
1285 amended as follows:

1286 73-43-11. The State Board of Medical Licensure shall have
1287 the following powers and responsibilities:

1288 (a) Setting policies and professional standards
1289 regarding the medical practice of physicians, osteopaths,
1290 podiatrists and physician assistants practicing with physician
1291 supervision;

1292 (b) Considering applications for licensure;

1293 (c) Conducting examinations for licensure;

1294 (d) Investigating alleged violations of the medical
1295 practice act;

1296 (e) Conducting hearings on disciplinary matters
1297 involving violations of state and federal law, probation,
1298 suspension and revocation of licenses;

1299 (f) Considering petitions for termination of
1300 probationary and suspension periods, and restoration of revoked
1301 licenses;

1302 (g) To promulgate and publish reasonable rules and
1303 regulations necessary to enable it to discharge its functions and
1304 to enforce the provisions of law regulating the practice of
1305 medicine;

1306 (h) To enter into contracts with any other state or
1307 federal agency, or with any private person, organization or group
1308 capable of contracting, if it finds such action to be in the
1309 public interest and in the furtherance of its
1310 responsibilities; * * *

1311 (i) Perform the duties prescribed by Sections 73-26-1
1312 through 73-26-5; and

1313 (j) Perform the duties prescribed by the Medical
1314 Practice Disclosure Act.

1315 **SECTION 35.** Section 73-25-27, Mississippi Code of 1972, is
1316 amended as follows:

1317 73-25-27. The Mississippi State Board of Medical Licensure
1318 after notice and opportunity for a hearing to the licentiate, is
1319 authorized to suspend or revoke for any cause named herein any
1320 license it has issued, or the renewal thereof, that authorizes any
1321 person to practice medicine, osteopathy, or any other method of
1322 preventing, diagnosing, relieving, caring for, or treating, or
1323 curing disease, injury or other bodily condition. The procedure
1324 for suspension of a license for being out of compliance with an
1325 order for support, and the procedure for the reissuance or
1326 reinstatement of a license suspended for that purpose, and the
1327 payment of any fees for the reissuance or reinstatement of a
1328 license suspended for that purpose, shall be governed by Section
1329 93-11-157 or 93-11-163, as the case may be. If there is any
1330 conflict between any provision of Section 93-11-157 or 93-11-163
1331 and any provision of this chapter, the provisions of Section
1332 93-11-157 or 93-11-163, as the case may be, shall control.

1333 Such notice shall be effected by registered mail or personal
1334 service setting forth the particular reasons for the proposed
1335 action and fixing a date not less than thirty (30) days or more
1336 than sixty (60) days from the date of such mailing or such
1337 service, at which time the licentiate shall be given an
1338 opportunity for a prompt and fair hearing. For the purpose of

1339 such hearing the board, acting by and through its executive
1340 office, may subpoena persons and papers on its own behalf and on
1341 behalf of licentiate, including records obtained pursuant to
1342 Section 73-25-28, may administer oaths and such testimony when
1343 properly transcribed, together with such papers and exhibits,
1344 shall be admissible in evidence for or against the licentiate. At
1345 such hearing licentiate may appear by counsel and personally in
1346 his own behalf. Any person sworn and examined as a witness in
1347 such hearing shall not be held to answer criminally, nor shall any
1348 papers or documents produced by such witness be competent evidence
1349 in any criminal proceedings against such witness other than for
1350 perjury in delivering his evidence. Any patient or a
1351 representative of the patient who has suffered harm by a physician
1352 subject to a hearing under this section shall have the right to
1353 attend all proceedings regarding such physician. Notice shall be
1354 provided to the patient or his representative at the same time and
1355 in the same manner as the notice is made to the physician. On the
1356 basis of any such hearing, or upon default of the licentiate, the
1357 Board of Medical Licensure shall make a determination specifying
1358 its findings of fact and conclusions of law.

1359 A copy of such determination shall be sent by registered mail
1360 or served personally upon the licentiate. The decision of the
1361 Board of Medical Licensure revoking or suspending the license
1362 shall become final thirty (30) days after so mailed or served
1363 unless within said period the licentiate appeals the decision to
1364 the chancery court, pursuant to the provisions hereof, and the
1365 proceedings in chancery shall be conducted as other matters coming
1366 before the court. All proceedings and evidence, together with
1367 exhibits, presented at such hearing before the Board of Medical
1368 Licensure in the event of appeal shall be admissible in evidence
1369 in said court.

1370 The Board of Medical Licensure may subpoena persons and
1371 papers on its own behalf and on behalf of the respondent,

1372 including records obtained pursuant to Section 73-25-28, may
1373 administer oaths, and may compel the testimony of witnesses. It
1374 may issue commissions to take testimony, and testimony so taken
1375 and sworn to shall be admissible in evidence for and against the
1376 respondent. The Board of Medical Licensure shall be entitled to
1377 the assistance of the chancery court or the chancellor in
1378 vacation, which, on petition by the board, shall issue ancillary
1379 subpoenas and petitions and may punish as for contempt of court in
1380 the event of noncompliance therewith.

1381 Unless the court otherwise decrees, a license that has been
1382 suspended by the Board of Medical Licensure for a stated period of
1383 time shall automatically become valid on the expiration of that
1384 period and a license that has been suspended for an indefinite
1385 period shall become again valid if and when the Board of Medical
1386 Licensure so orders, which it may do on its own motion or on the
1387 petition of the respondent. A license that has been revoked shall
1388 not be restored to validity except: (1) after a rehearing by the
1389 Board of Medical Licensure, on petition of the respondent, for
1390 good cause shown, filed within ten (10) days, immediately
1391 following the service on him of the order or judgment of the Board
1392 of Medical Licensure revoking his license or (2) by order of the
1393 court, on petition as aforesaid. Any licentiate whose license
1394 becomes again valid after a period of suspension or after it has
1395 been restored to validity after a rehearing or by an order of the
1396 court, shall record it again in the office of the clerk of the
1397 circuit court of the county in which he resides in conformity with
1398 the requirements of Section 73-25-13. Nothing in this chapter
1399 shall be construed as limiting or revoking the authority of any
1400 court or of any licensing or registering officer or board, other
1401 than the State Board of Medical Licensure, to suspend, revoke and
1402 reinstate licenses and to cancel registrations under the
1403 provisions of Section 41-29-311.

1404 **SECTION 36.** Any product sold or distributed in Mississippi
1405 by any manufacturer or distributor licensed to do business or
1406 doing business in Mississippi shall publish statewide notice of
1407 any recall of any product or its component parts within thirty
1408 (30) days of the recall. Any manufacturer or distributor who
1409 fails to provide notice of a recall as required by this section
1410 shall, upon conviction, be fined Fifty Thousand Dollars
1411 (\$50,000.00) for each violation. The Attorney General shall
1412 enforce compliance with the provisions of this section.

1413 **SECTION 37.** If the parties to a cause of action agree, any
1414 claim filed alleging damages of Fifty Thousand Dollars
1415 (\$50,000.00) or less may receive a bench trial which shall be
1416 conducted in two hundred seventy (270) days or less after the
1417 cause of action has been filed. The claimant shall state in his
1418 claim that the damages will not exceed Fifty Thousand Dollars
1419 (\$50,000.00).

1420 **SECTION 38.** (1) No policy or contract of liability
1421 insurance shall be issued or delivered in this state unless it
1422 contains provisions to the effect that the insolvency or
1423 bankruptcy of the insured shall not release the insurer from the
1424 payment of damages for injuries sustained or loss occasioned
1425 during the existence of the policy. Any judgment which may be
1426 rendered against the insured for which the insurer is liable which
1427 shall have become executory shall be deemed prima facie evidence
1428 of the insolvency of the insured, and an action may thereafter be
1429 maintained within the terms and limits of the policy by the
1430 injured person or his or her survivors or heirs against the
1431 insurer.

1432 (2) (a) The injured person or his or her survivors or heirs
1433 mentioned in subsection (1) of this section, at their option,
1434 shall have a right of direct action against the insurer within the
1435 terms and limits of the policy; and such action may be brought
1436 against the insurer alone, or against both the insured and insurer

1437 jointly and in solido, in the county in which the accident or
1438 injury occurred or in the county in which an action could be
1439 brought against either the insured or the insurer under the
1440 general rules of venue prescribed by the Rules of Civil Procedure
1441 only. However, such action may be brought against the insurer
1442 alone only when:

1443 (i) The insured has been adjudged a bankrupt by a
1444 court of competent jurisdiction or when proceedings to adjudge an
1445 insured a bankrupt have been commenced before a court of competent
1446 jurisdiction;

1447 (ii) The insured is insolvent;

1448 (iii) Service of citation or other process cannot
1449 be made on the insured;

1450 (iv) When the cause of action is for damages as a
1451 result of an offense or quasi-offense between children and their
1452 parents or between married persons; or

1453 (v) When the insurer is an uninsured motorist
1454 carrier.

1455 (b) This right of direct action shall exist whether or
1456 not the policy of insurance sued upon was written or delivered in
1457 the State of Mississippi and whether or not such policy contains a
1458 provision forbidding such direct action, provided the accident or
1459 injury occurred within the State of Mississippi. Nothing
1460 contained in this section shall be construed to affect the
1461 provisions of the policy or contract if such provisions are not in
1462 violation of the laws of this state.

1463 (3) The policy or contract of liability insurance shall be
1464 admissible into evidence in any proceeding regarding such policy
1465 or contract of liability insurance.

1466 (4) It is the intent of this section that any action brought
1467 under the provisions of this section shall be subject to all of
1468 the lawful conditions of the policy or contract and the defenses
1469 which could be urged by the insurer to a direct action brought by

1470 the insured, provided the terms and conditions of such policy or
1471 contract are not in violation of the laws of this state.

1472 (5) It is also the intent of this section that all liability
1473 policies within their terms and limits are executed for the
1474 benefit of all injured persons and their survivors or heirs to
1475 whom the insured is liable and that it is the purpose of all
1476 liability policies to give protection and coverage to all
1477 insureds, whether they are named insureds or additional insureds
1478 under the omnibus clause, for any legal liability such insured may
1479 have as or for a tort-feasor within the terms and limits of such
1480 policy.

1481 **SECTION 39. Medical review panel.**

1482 (1) **Claims; statute of limitations.**

1483 (a) **Definitions.** For purposes of this section:

1484 (i) "Board" means the Tort Claims Board
1485 established by Section 11-46-18, Mississippi Code of 1972.

1486 (ii) "Health care provider" means a person,
1487 partnership, limited liability partnership, limited liability
1488 company, corporation, facility, or institution licensed by this
1489 state to provide health care or professional services as a
1490 physician, hospital, institution for the aged or infirm, community
1491 blood center, tissue bank, dentist, registered or licensed
1492 practical nurse or certified nurse assistant, ambulance service,
1493 certified registered nurse anesthetist, nurse-midwife, licensed
1494 midwife, pharmacist, optometrist, podiatrist, chiropractor,
1495 physical therapist, occupational therapist, psychologist, social
1496 worker, licensed professional counselor, or any nonprofit facility
1497 considered tax-exempt under Section 501(c)(3), Internal Revenue
1498 Code, pursuant to 26 USC 501(c)(3), for the diagnosis and
1499 treatment of cancer or cancer-related diseases, whether or not
1500 such a facility is required to be licensed by this state, or any
1501 professional corporation a health care provider is authorized to
1502 form under the Mississippi Code of 1972, or any partnership,

1503 limited liability partnership, limited liability company, or
1504 corporation whose business is conducted principally by health care
1505 providers, or an officer, employee, partner, member, shareholder,
1506 or agent thereof acting in the course and scope of his employment.

1507 (iii) "Malpractice" means any unintentional tort
1508 or any breach of contract based on health care or professional
1509 services rendered, or which should have been rendered, by a health
1510 care provider, to a patient, including failure to render services
1511 timely and the handling of a patient, including loading and
1512 unloading of a patient, and also includes all legal responsibility
1513 of a health care provider arising from acts or omissions in the
1514 training or supervision of health care providers, or from defects
1515 in blood, tissue, transplants, drugs and medicines, or from
1516 defects in or failures of prosthetic devices, implanted in or used
1517 on or in the person of a patient.

1518 (b) (i) All malpractice claims against health care
1519 providers, other than claims validly agreed for submission to a
1520 lawfully binding arbitration procedure, shall be reviewed by a
1521 medical review panel as provided in this section unless all
1522 parties specifically waive the use of the medical review panel.

1523 (ii) An action against a health care provider or
1524 his insurer commenced in any court shall be presented to a medical
1525 review panel and an opinion rendered by the panel pursuant to this
1526 section, and the court's request for review shall constitute a
1527 stay pending the panel's decision.

1528 (iii) The request for review of a malpractice
1529 claim under this section shall be made by the court on its own
1530 motion or on the motion of any party.

1531 (c) (i) The request for review must be in writing,
1532 delivered to the board in person or by certified or registered
1533 United States mail, and include as an exhibit the complaint filed.

1534 (ii) Each defendant shall file a written answer
1535 within thirty (30) days of service of the request. If the

1536 defendant fails to file an answer as required, the board shall
1537 notify the defendant of the obligation to file and penalty for
1538 failure to file; notice shall be by certified or registered United
1539 States mail. If the defendant has not filed within thirty (30)
1540 days of the receipt of the notice specified in this subparagraph
1541 (ii), the request for review shall be dismissed; the panel, if
1542 formed, shall be dissolved, and the plaintiff shall be allowed to
1543 proceed in court upon the complaint filed.

1544 (2) **Dismissal of review; dissolution of panel.**

1545 (a) During the pendency of proceedings under this
1546 section, a health care provider against whom a claim has been
1547 filed may raise any exception or defenses available pursuant to
1548 Mississippi law, whether a procedural, statute of limitations or
1549 other exception or defense, at any time without need for
1550 completion of the review process by the medical review panel.

1551 (b) If the court finds for the party raising the
1552 exception or defense, that party shall be dismissed. If there are
1553 no defendants remaining, the panel, if established, shall be
1554 dissolved.

1555 (3) **Composition and selection of panel.**

1556 (a) The medical review panel shall consist of two (2)
1557 physicians who each hold an unlimited license to practice medicine
1558 in Mississippi, one (1) patient advocate appointed by the Tort
1559 Claims Board and one (1) attorney who shall be the nonvoting chair
1560 of the panel. The parties may agree on the attorney member of the
1561 medical review panel within thirty (30) days after the filing of
1562 the answer; if no agreement can be reached, then the attorney
1563 member of the medical review panel shall be selected as follows:

1564 (i) The board shall draw five (5) names at random
1565 from the list of attorneys maintained by the board who have
1566 medical malpractice experience. The names of judges, magistrates,
1567 district attorneys and assistant district attorneys shall be
1568 excluded if drawn and new names drawn in their place. After

1569 selection of the attorney names, the board shall notify the
1570 parties of the attorney names from which the parties, within five
1571 (5) days, may choose the attorney member of the panel. If no
1572 agreement can be reached within five (5) days, the parties shall
1573 immediately initiate a procedure of selecting the attorney by each
1574 striking two (2) names alternately, with the plaintiff striking
1575 first and so advising the defendant of the name of the attorney so
1576 stricken; thereafter, the defendant and the plaintiff shall
1577 alternately strike until both sides have stricken two (2) names
1578 and the remaining name shall be the attorney member of the panel.
1579 If either the plaintiff or defendant fails to strike, the board
1580 shall strike for that party within five (5) additional days.

1581 (ii) After the striking, the board shall notify
1582 the attorney and all parties of the name of the selected attorney.
1583 An attorney who has a conflict of interest shall decline to serve.

1584 (b) The attorney shall act as chairman of the panel and
1585 shall have no vote. The chairman shall preside at panel meetings,
1586 advise the panel as to questions of law, and shall prepare the
1587 opinion of the panel as required in subsection (7) of this
1588 section. It is the duty of the chairman to expedite the selection
1589 of the other panel members, to convene the panel and expedite the
1590 panel's review of the proposed complaint. The attorney chairman
1591 shall establish, by order, a reasonable schedule for submission of
1592 evidence to the medical review panel, but must allow sufficient
1593 time for the parties to make full and adequate presentation of
1594 related facts and authorities within one hundred twenty (120) days
1595 following selection of the panel.

1596 (c) The qualification and selection of physician
1597 members of the medical review panel shall be as follows:

1598 (i) All physicians who hold a license to practice
1599 medicine in the State of Mississippi and who are engaged in the
1600 active practice of medicine in this state, whether in the teaching
1601 profession or otherwise, shall be available for selection and,

1602 unless excused for cause, required to serve upon selection.

1603 (ii) Each party to the action shall have the right
1604 to select one (1) physician and upon selection the physician shall
1605 be required to serve.

1606 (iii) When there are multiple plaintiffs or
1607 defendants, there shall be only one (1) physician selected per
1608 side. The plaintiff, whether single or multiple, shall have the
1609 right to select one (1) physician, and the defendant, whether
1610 single or multiple, shall have the right to select one (1)
1611 physician.

1612 (iv) If any defendant is a physician, the
1613 physicians selected must be of the same specialty as at least one
1614 (1) physician defendant.

1615 (v) Parties and their attorneys are absolutely
1616 prohibited from contact with the physician whose name is
1617 submitted, either before or after submission. No physician may be
1618 informed of the method of any panel member's selection.

1619 (vi) No physician may be selected to serve on more
1620 than four (4) medical review panels in a twelve-month period.

1621 (vii) The physician selection process shall be
1622 completed within thirty (30) days of the selection of the attorney
1623 chairman.

1624 (d) Attorneys and physicians with any financial,
1625 employment, or personal or family ties to any party or attorney
1626 for a party shall not serve on a panel. Any conflict that cannot
1627 be resolved shall be decided by the court upon the motion of any
1628 party.

1629 (4) **Evidence.**

1630 (a) The evidence to be considered by the medical review
1631 panel shall be promptly submitted by the respective parties in
1632 written form only.

1633 (b) The evidence may consist of:

1634 (i) Medical records;

1635 (ii) Sworn statements;
1636 (iii) Expert reports signed by experts;
1637 (iv) Deposition transcripts;
1638 (v) Any other evidence allowed by the medical
1639 review panel or submitted by the parties.

1640 (c) Depositions of the parties only may be taken, and
1641 may be taken prior to the convening of the panel.

1642 (d) Upon request of any party or panel member, the
1643 board shall issue subpoenas and subpoenas duces tecum in aid of
1644 the taking of depositions and the production of documentary
1645 evidence for inspection, copying or both.

1646 (e) The plaintiff must sign a valid authorization
1647 allowing defendants to obtain the plaintiff's medical records.
1648 The defendant shall treat all medical records in a confidential
1649 manner and shall not disclose the contents of the records to
1650 anyone other than the panel or other experts; all other experts
1651 must treat the plaintiff's records as confidential.

1652 (f) The board shall send a copy of the evidence to each
1653 member of the panel.

1654 (5) **Hearings.** (a) After submission of all evidence and
1655 upon ten (10) days' notice to the other side, either party or the
1656 panel shall have the right to convene the panel at a time and
1657 place agreeable to the members of the panel; each party is
1658 entitled to request only one (1) hearing. The panel may hold as
1659 many hearings as it chooses. The purpose of a hearing is to ask
1660 questions as to additional evidence needed and to afford an
1661 opportunity to make oral presentation of the facts. The chairman
1662 of the panel shall preside at all hearings, which shall be
1663 informal.

1664 (b) The following are locations where hearings may be
1665 held:

1666 (i) At a courthouse or other available public
1667 building in the county where the act or omission is alleged to
1668 have occurred.

1669 (ii) The attorney chairman shall decide the
1670 location in the event of any dispute.

1671 (iii) Private offices in the county where the act
1672 or omission is alleged to have occurred may be used if there is no
1673 cost or if the parties pay for the cost.

1674 (6) **Panel deliberations and decision.** After receiving all
1675 evidence from the parties, the panel shall convene to discuss the
1676 evidence presented not less than one (1) time, and, not later than
1677 sixty (60) days after receiving all evidence from the parties,
1678 shall render a written decision signed by the panelists, together
1679 with written reasons for their conclusions, as follows:

1680 (a) There was a breach of the appropriate standard of
1681 care;

1682 (b) There was not a breach of the appropriate standard
1683 of care; or

1684 (c) Whether the defendant or defendants failed to
1685 comply with the appropriate standard of care cannot be determined.

1686 (7) **Form of decision.** The decision reached by the medical
1687 review panel shall be in writing, shall state the facts upon which
1688 it is based, shall be of public record, and shall be admissible as
1689 evidence in the civil case filed.

1690 (8) **Panelist immunity.** A panelist shall have absolute
1691 immunity from civil liability for all communications, findings,
1692 opinions and conclusions made in the course and scope of duties
1693 prescribed by this section.

1694 (9) **Panelist compensation.**

1695 (a) (i) Each physician member of the medical review
1696 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for
1697 all work performed as a member of the panel, and in addition
1698 thereto, per diem as provided in Section 25-3-69, Mississippi Code

1699 of 1972, and travel expenses as would be calculated for a state
1700 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1701 (ii) The attorney chairman of the medical review
1702 panel shall be paid at the rate of One Hundred Fifty Dollars
1703 (\$150.00) per hour, not to exceed a total of Three Thousand
1704 Dollars (\$3,000.00), for all work performed as a member of the
1705 panel, and in addition thereto, per diem as provided in Section
1706 25-3-69, Mississippi Code of 1972, and travel expenses as would be
1707 calculated for a state employee pursuant to Section 25-3-41,
1708 Mississippi Code of 1972.

1709 (b) The costs of the medical review panel shall be
1710 split between the parties. The panel members shall by affidavit
1711 request the payment due under this subsection (9) from the board,
1712 which in turn shall bill the parties for the proportionate share
1713 of each party.

1714 (10) **Delivery and effect of decision.** The chairman shall
1715 submit a copy of the panel's report to the board and all parties
1716 and attorneys by registered or certified mail within five (5) days
1717 after the panel renders its opinion. The panel's report shall be
1718 of public record.

1719 (11) **Allocation of attorney fees and expenses.**

1720 (a) If the decision of the panel finds for the
1721 defendant and the defendant prevails in court, the plaintiff shall
1722 pay reasonable attorney fees and expenses of the defendant to be
1723 determined by the court.

1724 (b) If the decision of the panel finds for the
1725 plaintiff:

1726 (i) The plaintiff may submit a written settlement
1727 offer for a sum certain to the defendant. If the defendant
1728 rejects the settlement offer, the plaintiff prevails in court, and
1729 the judgment is equal to or greater than the settlement offer, the
1730 defendant shall pay reasonable attorney fees and expenses of the
1731 plaintiff to be determined by the court.

1732 (ii) The defendant also may submit a written
1733 settlement offer for a sum certain to the plaintiff. If the
1734 plaintiff rejects the settlement offer and the defendant prevails
1735 in the subsequent court action, or the plaintiff prevails but the
1736 judgment is less than the defendant's settlement offer, the
1737 plaintiff shall pay reasonable attorney fees and expenses of the
1738 defendant to be determined by the court.

1739 **SECTION 40.** Section 11-46-19, Mississippi Code of 1972, is
1740 amended as follows:

1741 **[Until July 1, 2005, this section shall read as follows:]**

1742 11-46-19. (1) The board shall have the following powers:

1743 (a) To provide oversight over the Tort Claims Fund;

1744 (b) To approve any award made from the Tort Claims
1745 Fund;

1746 (c) To pay all necessary expenses attributable to the
1747 operation of the Tort Claims Fund from such fund;

1748 (d) To assign litigated claims against governmental
1749 entities other than political subdivisions to competent attorneys
1750 unless such governmental entity has a staff attorney who is
1751 competent to represent the governmental entity and is approved by
1752 the board; the board shall give primary consideration to attorneys
1753 practicing in the jurisdiction where the claim arose in assigning
1754 cases; attorneys hired to represent a governmental entity other
1755 than a political subdivision shall be paid according to the
1756 department fee schedule;

1757 (e) To approve all claimants' attorney fees in claims
1758 against the state;

1759 (f) To employ on a full-time basis a staff attorney who
1760 shall possess the minimum qualifications required to be a member
1761 of The Mississippi Bar, and such other staff as it may deem
1762 necessary to carry out the purposes of this chapter; the employees
1763 in the positions approved by the board shall be hired by the

1764 director, shall be employees of the department, and shall be
1765 compensated from the Tort Claims Fund;

1766 (g) To contract with one or more reputable insurance
1767 consulting firms as may be necessary;

1768 (h) To purchase any policies of liability insurance and
1769 to administer any plan of self-insurance or policies of liability
1770 insurance required for the protection of the state against claims
1771 and suits brought under this chapter;

1772 (i) To expend money from the Tort Claims Fund for the
1773 purchase of any policies of liability insurance and the payment of
1774 any award or settlement of a claim against the state under the
1775 provisions of this chapter or of a claim against any school
1776 district, junior college or community college district, or state
1777 agency, arising from the operation of school buses or other
1778 vehicles, under the provisions of Section 37-41-42;

1779 (j) To cancel, modify or replace any policy or policies
1780 of liability insurance procured by the board;

1781 (k) To issue certificates of coverage to governmental
1782 entities, including any political subdivision participating in any
1783 plan of liability protection approved by the board;

1784 (l) To review and approve or reject any plan of
1785 liability insurance or self-insurance reserves proposed or
1786 provided by political subdivisions if such plan is intended to
1787 serve as security for risks of claims and suits against them for
1788 which immunity has been waived under this chapter;

1789 (m) To administer disposition of claims against the
1790 Tort Claims Fund;

1791 (n) To withhold issuance of any warrants payable from
1792 funds of a participating state entity should such entity fail to
1793 make required contributions to the Tort Claims Fund in the time
1794 and manner prescribed by the board;

1795 (o) To develop a comprehensive statewide list of
1796 attorneys who are qualified to represent the state and any

1797 employee thereof named as a defendant in a claim brought under
1798 this chapter against the state or such employee;

1799 (p) To develop a schedule of fees for paying attorneys
1800 defending claims against the state or an employee thereof;

1801 (q) To adopt and promulgate such reasonable rules and
1802 regulations and to do and perform all such acts as are necessary
1803 to carry out its powers and duties under this chapter;

1804 (r) To establish and assess premiums to be paid by
1805 governmental entities required to participate in the Tort Claims
1806 Fund;

1807 (s) To contract with a third-party administrator to
1808 process claims against the state under this chapter;

1809 (t) To annually submit its budget request to the
1810 Legislature as a state agency;

1811 (u) To dispose of salvage obtained in settlement or
1812 payment of any claim at fair market value by such means and upon
1813 such terms as the board may think best; * * *

1814 (v) To administer the Medical Malpractice Insurance
1815 Availability Plan under Section 83-48-5; and

1816 (w) To act as the board as required under House Bill
1817 No. _____, 2004 First Extraordinary Session, dealing with medical
1818 malpractice claims as follows:

1819 (i) To accept filings under the act;

1820 (ii) To coordinate the selection of panels;

1821 (iii) To maintain lists of attorneys eligible for
1822 appointment as attorney chairmen;

1823 (iv) To promulgate rules in reference to the
1824 qualifications of attorneys serving as panel members;

1825 (v) To promulgate rules and regulations necessary
1826 to implement the provisions of Section 39 of House Bill No. _____,
1827 2004 First Extraordinary Session; and

1828 (vi) To provide general administrative support.

1829 (2) Policies of liability insurance purchased for the
1830 protection of governmental entities against claims and suits
1831 brought under this chapter shall be purchased pursuant to the
1832 competitive bidding procedures set forth in Section 31-7-13.

1833 (3) The department shall have the following powers and
1834 duties:

1835 (a) To annually report to the Legislature concerning
1836 each comprehensive plan of liability protection established
1837 pursuant to Section 11-46-17(2). Such report shall include a
1838 comprehensive analysis of the cost of the plan, a breakdown of the
1839 cost to participating state entities, and such other information
1840 as the department may deem necessary.

1841 (b) To provide the board with any staff and meeting
1842 facilities as may be necessary to carry out the duties of the
1843 board as provided in this chapter.

1844 (c) To submit the board's budget request for the
1845 initial year of operation of the board in order to authorize
1846 expenditures for the 1993-1994 fiscal year and for the
1847 appropriation of such general funds as shall be required for the
1848 commencement of its activities.

1849 **[From and after July 1, 2005, this section shall read as**
1850 **follows:]**

1851 11-46-19. (1) The board shall have the following powers:

1852 (a) To provide oversight over the Tort Claims Fund;

1853 (b) To approve any award made from the Tort Claims
1854 Fund;

1855 (c) To pay all necessary expenses attributable to the
1856 operation of the Tort Claims Fund from such fund;

1857 (d) To assign litigated claims against governmental
1858 entities other than political subdivisions to competent attorneys
1859 unless such governmental entity has a staff attorney who is
1860 competent to represent the governmental entity and is approved by
1861 the board; the board shall give primary consideration to attorneys

1862 practicing in the jurisdiction where the claim arose in assigning
1863 cases; attorneys hired to represent a governmental entity other
1864 than a political subdivision shall be paid according to the
1865 department fee schedule;

1866 (e) To approve all claimants' attorney fees in claims
1867 against the state;

1868 (f) To employ on a full-time basis a staff attorney who
1869 shall possess the minimum qualifications required to be a member
1870 of The Mississippi Bar, and such other staff as it may deem
1871 necessary to carry out the purposes of this chapter; the employees
1872 in the positions approved by the board shall be hired by the
1873 director, shall be employees of the department, and shall be
1874 compensated from the Tort Claims Fund;

1875 (g) To contract with one or more reputable insurance
1876 consulting firms as may be necessary;

1877 (h) To purchase any policies of liability insurance and
1878 to administer any plan of self-insurance or policies of liability
1879 insurance required for the protection of the state against claims
1880 and suits brought under this chapter;

1881 (i) To expend money from the Tort Claims Fund for the
1882 purchase of any policies of liability insurance and the payment of
1883 any award or settlement of a claim against the state under the
1884 provisions of this chapter or of a claim against any school
1885 district, junior college or community college district, or state
1886 agency, arising from the operation of school buses or other
1887 vehicles, under the provisions of Section 37-41-42;

1888 (j) To cancel, modify or replace any policy or policies
1889 of liability insurance procured by the board;

1890 (k) To issue certificates of coverage to governmental
1891 entities, including any political subdivision participating in any
1892 plan of liability protection approved by the board;

1893 (l) To review and approve or reject any plan of
1894 liability insurance or self-insurance reserves proposed or

1895 provided by political subdivisions if such plan is intended to
1896 serve as security for risks of claims and suits against them for
1897 which immunity has been waived under this chapter;

1898 (m) To administer disposition of claims against the
1899 Tort Claims Fund;

1900 (n) To withhold issuance of any warrants payable from
1901 funds of a participating state entity should such entity fail to
1902 make required contributions to the Tort Claims Fund in the time
1903 and manner prescribed by the board;

1904 (o) To develop a comprehensive statewide list of
1905 attorneys who are qualified to represent the state and any
1906 employee thereof named as a defendant in a claim brought under
1907 this chapter against the state or such employee;

1908 (p) To develop a schedule of fees for paying attorneys
1909 defending claims against the state or an employee thereof;

1910 (q) To adopt and promulgate such reasonable rules and
1911 regulations and to do and perform all such acts as are necessary
1912 to carry out its powers and duties under this chapter;

1913 (r) To establish and assess premiums to be paid by
1914 governmental entities required to participate in the Tort Claims
1915 Fund;

1916 (s) To contract with a third-party administrator to
1917 process claims against the state under this chapter;

1918 (t) To annually submit its budget request to the
1919 Legislature as a state agency;

1920 (u) To dispose of salvage obtained in settlement or
1921 payment of any claim at fair market value by such means and upon
1922 such terms as the board may think best; and

1923 (v) To act as the board as required under House Bill
1924 No. _____, 2004 First Extraordinary Session, dealing with medical
1925 malpractice claims as follows:

1926 (i) To accept filings under the act;

1927 (ii) To coordinate the selection of panels;

1928 (iii) To maintain lists of attorneys eligible for
1929 appointment as attorney chairmen;

1930 (iv) To promulgate rules in reference to the
1931 qualifications of attorneys serving as panel members;

1932 (v) To promulgate rules and regulations necessary
1933 to implement the provisions of Section 39 of House Bill No. _____,
1934 2004 First Extraordinary Session; and

1935 (vi) To provide general administrative support.

1936 (2) Policies of liability insurance purchased for the
1937 protection of governmental entities against claims and suits
1938 brought under this chapter shall be purchased pursuant to the
1939 competitive bidding procedures set forth in Section 31-7-13.

1940 (3) The department shall have the following powers and
1941 duties:

1942 (a) To annually report to the Legislature concerning
1943 each comprehensive plan of liability protection established
1944 pursuant to Section 11-46-17(2). Such report shall include a
1945 comprehensive analysis of the cost of the plan, a breakdown of the
1946 cost to participating state entities, and such other information
1947 as the department may deem necessary.

1948 (b) To provide the board with any staff and meeting
1949 facilities as may be necessary to carry out the duties of the
1950 board as provided in this chapter.

1951 (c) To submit the board's budget request for the
1952 initial year of operation of the board in order to authorize
1953 expenditures for the 1993-1994 fiscal year and for the
1954 appropriation of such general funds as shall be required for the
1955 commencement of its activities.

1956 **SECTION 41.** If any provision of this act is held by a court
1957 to be invalid, such invalidity shall not affect the remaining
1958 provisions of this act, and to this end the provisions of this act
1959 are declared severable.

1960 **SECTION 42.** This act shall take effect and be in force from
1961 and after July 1, 2004, and Sections 1 through 8 of this act shall
1962 apply to all causes of action filed on or after that date.