

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

To: Judiciary A

HOUSE BILL NO. 12

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 BRING FORWARD SECTIONS 13-5-23, 13-5-25,  
11 13-5-28, 13-5-34, 25-7-61 AND 33-1-5, MISSISSIPPI CODE OF 1972,  
12 REGARDING SELECTION OF JURORS FOR PURPOSES OF AMENDMENT; TO AMEND  
13 SECTION 83-48-5, MISSISSIPPI CODE OF 1972, TO EXPAND THE MEDICAL  
14 MALPRACTICE AVAILABILITY PLAN THAT IS ADMINISTERED BY THE TORT  
15 CLAIMS BOARD FOR PRIOR ACTS COVERAGE PURPOSES; TO AMEND SECTION  
16 11-46-1, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF  
17 "EMPLOYEE" FOR PURPOSES OF LIMITED LIABILITY UNDER THE TORT CLAIMS  
18 BOARD TO INCLUDE THOSE PHYSICIANS WHO PROVIDE HEALTH CARE SERVICES  
19 TO MEDICAID RECIPIENTS, STATE AND SCHOOL EMPLOYEES HEALTH  
20 INSURANCE PLAN PARTICIPANTS AND CHILDREN'S HEALTH INSURANCE  
21 PROGRAM PARTICIPANTS IF AT LEAST THIRTY-FIVE PERCENT OF THE  
22 PHYSICIAN'S PATIENTS ARE MEDICAID RECIPIENTS, OR NOT TO EXCEED ONE  
23 HUNDRED TWENTY-FIVE PHYSICIANS; TO INCLUDE CERTAIN RETIRED  
24 PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID HEALTH CARE SERVICES TO  
25 ANY PUBLIC ENTITY OR PRIVATE ENTITY; TO CREATE IN THE STATE  
26 TREASURY A SPECIAL FUND TO THE CREDIT OF THE MISSISSIPPI TORT  
27 CLAIMS BOARD WHICH SHALL BE COMPRISED OF ANY FUNDS MADE AVAILABLE  
28 FOR THE FUND BY THE LEGISLATURE; TO PROVIDE THAT MONIES IN THE  
29 SPECIAL FUND SHALL BE EXPENDED BY THE MISSISSIPPI TORT CLAIMS  
30 BOARD TO PROVIDE ADDITIONAL FUNDS FOR PRIOR ACT COVERAGE FOR PLAN  
31 PARTICIPANTS AND TO PAY THE MEDICAL MALPRACTICE PREMIUMS FOR THOSE  
32 RETIRED PHYSICIANS DESCRIBED HEREIN; TO CREATE AN ADVISORY COUNCIL  
33 TO ASSIST THE MISSISSIPPI TORT CLAIMS BOARD IN DETERMINING WHETHER  
34 A PHYSICIAN MEETS THE PERCENTAGE REQUIREMENT NECESSARY TO QUALIFY  
35 AS AN EMPLOYEE FOR LIMITED LIABILITY PURPOSES; TO PROVIDE RATES  
36 FOR COPIES OF MEDICAL RECORDS THAT MAY BE CHARGED BY MEDICAL  
37 PROVIDERS AND FACILITIES; TO AMEND SECTION 73-25-27, MISSISSIPPI  
38 CODE OF 1972, TO PROVIDE THE RIGHT FOR HARMED PATIENTS TO ATTEND  
39 DISCIPLINARY PROCEEDINGS INVOLVING THE PHYSICIAN RESPONSIBLE FOR  
40 THE HARM; TO PROVIDE FOR A WAIVER OF THE MEDICAL PRIVILEGE IN  
41 CERTAIN CASES; TO REQUIRE STATEWIDE PUBLICATION OF RECALL NOTICES;  
42 TO ALLOW BENCH TRIALS IN CERTAIN CASES IF THE PARTIES AGREE; TO  
43 PROVIDE THAT ALL MALPRACTICE CLAIMS SHALL BE REVIEWED BY A MEDICAL  
44 REVIEW PANEL; TO ALLOW PARTIES TO MUTUALLY AGREE TO OPT OUT OF  
45 THIS REQUIREMENT; TO ESTABLISH THE MEMBERSHIP OF THE REVIEW PANEL;  
46 TO PROVIDE WHAT EVIDENCE MAY BE CONSIDERED BY THE PANEL; TO  
47 PROVIDE THE FORM OF THE DECISION; TO PROVIDE FOR PANELIST IMMUNITY  
48 AND COMPENSATION; TO AMEND SECTION 11-46-19, MISSISSIPPI CODE OF  
49 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

53           11-11-3. (1) (a) (i) Civil actions of which the circuit  
54 court has original jurisdiction shall be commenced in the county  
55 where the defendant resides, or, if a corporation, in the county  
56 of its principal place of business, or in the county where a  
57 substantial alleged act or omission occurred or where a  
58 substantial event that caused the injury occurred.

59                   (ii) Civil actions alleging a defective product  
60 may also be commenced in the county where the plaintiff obtained  
61 the product.

62                   (b) If venue in a civil action against a nonresident  
63 defendant cannot be asserted under paragraph (a) of this  
64 subsection (1), a civil action against a nonresident may be  
65 commenced in the county where the plaintiff resides or is  
66 domiciled.

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

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

73           11-1-60. (1) For the purposes of this section, the  
74 following words and phrases shall have the meanings ascribed  
75 herein unless the context clearly requires otherwise:

76                   (a) "Noneconomic damages" means subjective,  
77 nonpecuniary damages arising from death, pain, suffering,  
78 inconvenience, mental anguish, worry, emotional distress, loss of  
79 society and companionship, loss of consortium, bystander injury,  
80 physical impairment, disfigurement, injury to reputation,  
81 humiliation, embarrassment, loss of the enjoyment of life, hedonic  
82 damages, other nonpecuniary damages, and any other theory of  
83 damages such as fear of loss, illness or injury. The term

84 "noneconomic damages" shall not include \* \* \* punitive or  
85 exemplary damages.

86 (b) "Actual economic damages" means objectively  
87 verifiable pecuniary damages arising from medical expenses and  
88 medical care, rehabilitation services, custodial care,  
89 disabilities, loss of earnings and earning capacity, loss of  
90 income, burial costs, loss of use of property, costs of repair or  
91 replacement of property, costs of obtaining substitute domestic  
92 services, loss of employment, loss of business or employment  
93 opportunities, and other objectively verifiable monetary losses.

94 \* \* \*

95 (2) (a) In any cause of action filed on or after July 1,  
96 2004, for injury based on malpractice or breach of standard of  
97 care against a provider of health care, including institutions for  
98 the aged or infirm, in the event the trier of fact finds the  
99 defendant liable, they shall not award the plaintiff more than the  
100 following for noneconomic damages:

101 (i) For claims for causes of action filed on or  
102 after passage of Chapter 2, Third Extraordinary Session 2002, but  
103 before July 1, 2011, the sum of Five Hundred Thousand Dollars  
104 (\$500,000.00);

105 (ii) For claims for causes of action filed on or  
106 after July 1, 2011, but before July 1, 2017, the sum of Seven  
107 Hundred Fifty Thousand Dollars (\$750,000.00);

108 (iii) For claims for causes of action filed on or  
109 after July 1, 2017, the sum of One Million Dollars  
110 (\$1,000,000.00).

111 (b) In any civil action filed on or after January 1,  
112 2005, other than those actions described in paragraph (a) of this  
113 subsection, in the event the trier of fact finds the defendant  
114 liable, they shall not award the plaintiff more than Four Million  
115 Dollars (\$4,000,000.00) for noneconomic damages.

116 \* \* \*

117 It is the intent of this section to limit all noneconomic  
118 damages to the above.

119 (c) The trier of fact shall not be advised of the  
120 limitations imposed by this subsection (2) and the judge shall  
121 appropriately reduce any award of noneconomic damages that exceeds  
122 the applicable limitation.

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

126 (4) Nothing in this section shall be construed to impose a  
127 limitation on damages for disfigurement, blindness, third degree  
128 burns, loss of reproductive capabilities or actual economic  
129 damages.

130 (5) Nothing contained in subsection (1) of this section  
131 shall be construed as creating a cause of action or as setting  
132 forth elements of or types of damages that are or are not  
133 recoverable in any type of cause of action.

134 (6) The Department of Finance and Administration shall  
135 annually adjust the caps in this section for inflation.

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

138 11-1-63. Subject to the provisions of Section 11-1-64, in  
139 any action for damages caused by a product except for commercial  
140 damage to the product itself:

141 (a) The manufacturer or seller of the product shall not  
142 be liable if the claimant does not prove by the preponderance of  
143 the evidence that at the time the product left the control of the  
144 manufacturer or seller:

145 (i) 1. The product was defective because it  
146 deviated in a material way from the manufacturer's specifications  
147 or from otherwise identical units manufactured to the same  
148 manufacturing specifications, or

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

151                   3. The product was designed in a defective  
152 manner, or

153                   4. The product breached an express warranty  
154 or failed to conform to other express factual representations upon  
155 which the claimant justifiably relied in electing to use the  
156 product; and

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

159                   (iii) The defective and unreasonably dangerous  
160 condition of the product proximately caused the damages for which  
161 recovery is sought.

162                   (b) A product is not defective in design or formulation  
163 if the harm for which the claimant seeks to recover compensatory  
164 damages was caused by an inherent characteristic of the product  
165 which is a generic aspect of the product that cannot be eliminated  
166 without substantially compromising the product's usefulness or  
167 desirability and which is recognized by the ordinary person with  
168 the ordinary knowledge common to the community.

169                   (c) (i) In any action alleging that a product is  
170 defective because it failed to contain adequate warnings or  
171 instructions pursuant to paragraph (a)(i)2 of this section, the  
172 manufacturer or seller shall not be liable if the claimant does  
173 not prove by the preponderance of the evidence that at the time  
174 the product left the control of the manufacturer or seller, the  
175 manufacturer or seller knew or in light of reasonably available  
176 knowledge should have known about the danger that caused the  
177 damage for which recovery is sought and that the ordinary user or  
178 consumer would not realize its dangerous condition.

179                   (ii) An adequate product warning or instruction is  
180 one that a reasonably prudent person in the same or similar  
181 circumstances would have provided with respect to the danger and

182 that communicates sufficient information on the dangers and safe  
183 use of the product, taking into account the characteristics of,  
184 and the ordinary knowledge common to an ordinary consumer who  
185 purchases the product; or in the case of a prescription drug,  
186 medical device or other product that is intended to be used only  
187 under the supervision of a physician or other licensed  
188 professional person, taking into account the characteristics of,  
189 and the ordinary knowledge common to, a physician or other  
190 licensed professional who prescribes the drug, device or other  
191 product.

192 (d) In any action alleging that a product is defective  
193 pursuant to paragraph (a) of this section, the manufacturer or  
194 seller shall not be liable if the claimant (i) had knowledge of a  
195 condition of the product that was inconsistent with his safety;  
196 (ii) appreciated the danger in the condition; and (iii)  
197 deliberately and voluntarily chose to expose himself to the danger  
198 in such a manner to register assent on the continuance of the  
199 dangerous condition.

200 (e) In any action alleging that a product is defective  
201 pursuant to paragraph (a)(i)2 of this section, the manufacturer or  
202 seller shall not be liable if the danger posed by the product is  
203 known or is open and obvious to the user or consumer of the  
204 product, or should have been known or open and obvious to the user  
205 or consumer of the product, taking into account the  
206 characteristics of, and the ordinary knowledge common to, the  
207 persons who ordinarily use or consume the product.

208 (f) In any action alleging that a product is defective  
209 because of its design pursuant to paragraph (a)(i)3 of this  
210 section, the manufacturer or product seller shall not be liable if  
211 the claimant does not prove by the preponderance of the evidence  
212 that at the time the product left the control of the manufacturer  
213 or seller:

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

218 (ii) The product failed to function as expected  
219 and there existed a feasible design alternative that would have to  
220 a reasonable probability prevented the harm. A feasible design  
221 alternative is a design that would have to a reasonable  
222 probability prevented the harm without impairing the utility,  
223 usefulness, practicality or desirability of the product to users  
224 or consumers.

225 (g) (i) The manufacturer of a product who is found  
226 liable for a defective product pursuant to paragraph (a) shall  
227 indemnify a product seller for the costs of litigation, any  
228 reasonable expenses, reasonable attorney's fees and any damages  
229 awarded by the trier of fact unless the seller exercised  
230 substantial control over that aspect of the design, testing,  
231 manufacture, packaging or labeling of the product that caused the  
232 harm for which recovery of damages is sought; the seller altered  
233 or modified the product, and the alteration or modification was a  
234 substantial factor in causing the harm for which recovery of  
235 damages is sought; the seller had actual knowledge of the  
236 defective condition of the product at the time he supplied same;  
237 or the seller made an express factual representation about the  
238 aspect of the product which caused the harm for which recovery of  
239 damages is sought.

240 (ii) Subparagraph (i) shall not apply unless the  
241 seller has given prompt notice of the suit to the manufacturer  
242 within ninety (90) days of the service of the complaint against  
243 the seller.

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

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

249           11-1-64. (1) A defendant whose liability is based solely on  
250 his status as a seller in the stream of commerce may be dismissed  
251 from a products liability claim as provided in this section.

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

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

264           (4) The parties shall have sixty (60) days in which to  
265 conduct discovery on the issues raised in the motion and  
266 affidavit. The court for good cause shown, may extend the time  
267 for discovery, and may enter a protective order pursuant to the  
268 rules of civil procedure regarding the scope of discovery on other  
269 issues.

270           (5) Any party may move for a hearing on a motion to dismiss  
271 under this section. If the requirements of subsections (2) and  
272 (3) of this section are met, and no party comes forward at such a  
273 hearing with evidence of facts which would render the defendant  
274 seeking dismissal under this section liable on some basis other  
275 than his status as a seller in the stream of commerce, the court  
276 shall dismiss without prejudice the claim as to that defendant.

277           (6) No order of dismissal under this section shall operate  
278 to divest a court of venue or jurisdiction otherwise proper at the  
279 time the action was commenced. A defendant dismissed pursuant to

280 this section shall be considered to remain a party to such action  
281 only for such purposes.

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

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

286 11-1-65. (1) In any action in which punitive damages are  
287 sought:

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

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

297 (c) If, but only if, an award of compensatory damages  
298 has been made against a party, the court shall promptly commence  
299 an evidentiary hearing \* \* \* to determine whether punitive damages  
300 may be considered by the same trier of fact.

301 (d) The court shall determine whether the issue of  
302 punitive damages may be submitted to the trier of fact; and, if  
303 so, the trier of fact shall determine whether to award punitive  
304 damages and in what amount.

305 (e) In all cases involving an award of punitive  
306 damages, the fact finder, in determining the amount of punitive  
307 damages, shall consider, to the extent relevant, the following:  
308 the defendant's financial condition and net worth; the nature and  
309 reprehensibility of the defendant's wrongdoing, for example, the  
310 impact of the defendant's conduct on the plaintiff, or the  
311 relationship of the defendant to the plaintiff; the defendant's  
312 awareness of the amount of harm being caused and the defendant's

313 motivation in causing such harm; the duration of the defendant's  
314 misconduct and whether the defendant attempted to conceal such  
315 misconduct; and any other circumstances shown by the evidence that  
316 bear on determining a proper amount of punitive damages. The  
317 trier of fact shall be instructed that the primary purpose of  
318 punitive damages is to punish the wrongdoer and deter similar  
319 misconduct in the future by the defendant and others while the  
320 purpose of compensatory damages is to make the plaintiff whole.

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

326 (ii) In determining whether the award is  
327 excessive, the court shall take into consideration the following  
328 factors:

329 1. Whether there is a reasonable relationship  
330 between the punitive damage award and the harm likely to result  
331 from the defendant's conduct as well as the harm that actually  
332 occurred;

333 2. The degree of reprehensibility of the  
334 defendant's conduct, the duration of that conduct, the defendant's  
335 awareness, any concealment, and the existence and frequency of  
336 similar past conduct;

337 3. The financial condition and net worth of  
338 the defendant; and

339 4. In mitigation, the imposition of criminal  
340 sanctions on the defendant for its conduct and the existence of  
341 other civil awards against the defendant for the same conduct.

342 (2) The seller of a product other than the manufacturer  
343 shall not be liable for punitive damages unless the seller  
344 exercised substantial control over that aspect of the design,  
345 testing, manufacture, packaging or labeling of the product that

346 caused the harm for which recovery of damages is sought; the  
347 seller altered or modified the product, and the alteration or  
348 modification was a substantial factor in causing the harm for  
349 which recovery of damages is sought; the seller had actual  
350 knowledge of the defective condition of the product at the time he  
351 supplied same \* \* \*.

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

355 (i) Twenty Million Dollars (\$20,000,000.00) for a  
356 defendant with a net worth of more than One Billion Dollars  
357 (\$1,000,000,000.00);

358 (ii) Fifteen Million Dollars (\$15,000,000.00) for  
359 a defendant with a net worth of more than Seven Hundred Fifty  
360 Million Dollars (\$750,000,000.00) but not more than One Billion  
361 Dollars (\$1,000,000,000.00);

362 (iii) Five Million Dollars (\$5,000,000.00) for a  
363 defendant with a net worth of more than Five Hundred Million  
364 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty  
365 Million Dollars (\$750,000,000.00);

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

370 (v) Two Million Five Hundred Thousand Dollars  
371 (\$2,500,000.00) for a defendant with a net worth of more than  
372 Fifty Million Dollars (\$50,000,000.00) but not more than One  
373 Hundred Million Dollars (\$100,000,000.00); or

374 (vi) Two percent (2%) of the defendant's net worth  
375 for a defendant with a net worth of Fifty Million Dollars  
376 (\$50,000,000.00) or less.

377 (b) For the purposes of determining the defendant's net  
378 worth in paragraph (a), the amount of the net worth shall be

379 determined in accordance with Generally Accepted Accounting  
380 Principles.

381 (c) The limitation on the amount of punitive damages  
382 imposed by this subsection (3) shall not be disclosed to the trier  
383 of fact, but shall be applied by the court to any punitive damages  
384 verdict.

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

389 (i) If the defendant was convicted of a felony  
390 under the laws of this state or under federal law which caused the  
391 damages or injury; or

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

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

398 (4) Nothing in this section shall be construed as creating a  
399 right to an award of punitive damages or to limit the duty of the  
400 court, or the appellate courts, to scrutinize all punitive damage  
401 awards, ensure that all punitive damage awards comply with  
402 applicable procedural, evidentiary and constitutional  
403 requirements, and to order remittitur where appropriate.

404 \* \* \*

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

407 11-1-66. (1) No owner, occupant, lessee or managing agent  
408 of property shall be civilly liable for the criminal acts of a  
409 third party, unless such owner, occupant, lessee or managing agent  
410 knew or, with the exercise of reasonable care, should have known  
411 of the risk of criminal conduct on such property and the failure

412 to exercise reasonable care to deter such foreseeable conduct is a  
413 proximate cause of damages to an individual or entity.

414 (2) No owner, occupant, lessee or managing agent of property  
415 shall be liable for the death or injury of an independent  
416 contractor or the independent contractor's employees resulting  
417 from dangers of which the contractor knew or reasonably should  
418 have known.

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

421 85-5-7. (1) As used in this section "fault" means an act or  
422 omission of a person which is a proximate cause of injury or death  
423 to another person or persons, damages to property, tangible or  
424 intangible, or economic injury, including, but not limited to,  
425 negligence, malpractice, strict liability, absolute liability or  
426 failure to warn. "Fault" shall not include any tort which results  
427 from an act or omission committed with a specific wrongful intent.

428 \* \* \*

429 (2) Except as otherwise provided in subsection (4) of this  
430 section, in any civil action based on fault, the liability for  
431 damages caused by two (2) or more persons shall be several only,  
432 and not joint and several and a joint tort-feasor shall be liable  
433 only for the amount of damages allocated to him in direct  
434 proportion to his percentage of fault. In assessing percentages  
435 of fault an employer and the employer's employee or a principal  
436 and the principal's agent shall be considered as one (1) defendant  
437 when the liability of such employer or principal has been caused  
438 by the wrongful or negligent act or omission of the employee or  
439 agent.

440 \* \* \*

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

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

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

453       \* \* \*

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

457       **SECTION 8.** Section 13-5-23, Mississippi Code of 1972, is  
458 brought forward as follows:

459       13-5-23. All qualified persons shall be liable to serve as  
460 jurors, unless excused by the court for one (1) of the following  
461 causes:

462               (a) When the juror is ill, or when on account of  
463 serious illness in the juror's family, the presence of the juror  
464 is required at home,

465               (b) When the juror's attendance would cause a serious  
466 financial loss to the juror or to the juror's business, or

467               (c) When the juror is under an emergency, fairly  
468 equivalent to those mentioned in the foregoing clauses (a) and  
469 (b).

470       An excuse of illness under clause (a) may be made to the  
471 clerk of court outside of open court by providing the clerk with  
472 either a certificate of a licensed physician or an affidavit of  
473 the juror, stating that the juror is ill or that there is a  
474 serious illness in the juror's family. The test of an excuse  
475 under clause (b) shall be whether, if the juror were incapacitated  
476 by illness or otherwise for a week, some other persons would be

477 available or could reasonably be procured to carry on the business  
478 for the week, and the test of an excuse under clause (c) shall be  
479 such as to be the fair equivalent, under the circumstances of that  
480 prescribed under clause (b). In cases under clauses (b) and (c)  
481 the excuse must be made by the juror, in open court, under oath.

482 It shall be unlawful for any employer or other person to  
483 persuade or attempt to persuade any juror to avoid jury service,  
484 or to intimidate or to threaten any juror in that respect. So to  
485 do shall be deemed an interference with the administration of  
486 justice and a contempt of court and punishable as such.

487 But a tales juror, save when drawn and retained for the week,  
488 shall not be compelled to serve two (2) days successively unless  
489 the case in which the juror is impaneled continues longer than one  
490 (1) day. Grand jurors shall serve until discharged by the court.

491 **SECTION 9.** Section 13-5-25, Mississippi Code of 1972, is  
492 brought forward as follows:

493 13-5-25. Every citizen over sixty-five (65) years of age,  
494 and everyone who has served on the regular panel as a juror in the  
495 actual trial of one or more litigated cases within two (2) years,  
496 shall be exempt from service if he claims the privilege; but the  
497 latter class shall serve as talesmen, and on special venire, and  
498 on the regular panel, if there be a deficiency of jurors. No  
499 qualified juror shall be excluded because of any such reasons, but  
500 the same shall be a personal privilege to be claimed by any person  
501 selected for jury duty. Any citizen over sixty-five (65) years of  
502 age may claim this personal privilege outside of open court by  
503 providing the clerk of court with information that allows the  
504 clerk to determine the validity of the claim.

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

509           **SECTION 10.** Section 13-5-28, Mississippi Code of 1972, is  
510 brought forward as follows:

511           13-5-28. If a grand, petit or other jury is ordered to be  
512 drawn, the clerk thereafter shall cause each person drawn for jury  
513 service to be served with a summons, either personally or by mail,  
514 addressed to him at his usual residence, business or post office  
515 address, requiring him to report for jury service at a specified  
516 time and place.

517           **SECTION 11.** Section 13-5-34, Mississippi Code of 1972, is  
518 brought forward as follows:

519           13-5-34. A person summoned for jury service who fails to  
520 appear or to complete jury service as directed shall be ordered by  
521 the court to appear forthwith and show cause for his failure to  
522 comply with the summons. If he fails to show good cause for  
523 noncompliance with the summons he is guilty of criminal contempt  
524 and upon conviction may be fined not more than One Hundred Dollars  
525 (\$100.00) or imprisoned not more than three (3) days, or both.

526           **SECTION 12.** Section 25-7-61, Mississippi Code of 1972, is  
527 brought forward as follows:

528           25-7-61. (1) Fees of jurors shall be payable as follows:

529           (a) Grand jurors and petit jurors in the chancery,  
530 county, circuit and special eminent domain courts shall be paid an  
531 amount to be set by the board of supervisors, not to be less than  
532 Twenty-five Dollars (\$25.00) per day and not to be greater than  
533 Forty Dollars (\$40.00) per day, plus mileage authorized in Section  
534 25-3-41. In the trial of all cases where jurors are in charge of  
535 bailiffs and are not permitted to separate, the sheriff with the  
536 approval of the trial judge may pay for room and board of jurors  
537 on panel for actual time of trial.

538           No grand juror shall receive any compensation except mileage  
539 unless he shall have been sworn as provided by Section 13-5-45;  
540 and no petit juror except those jurors called on special venires  
541 shall receive any compensation authorized under this subsection

542 except mileage unless he shall have been sworn as provided by  
543 Section 13-5-71.

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

550 (c) Jurors in the justice courts shall be paid an  
551 amount of not less than Ten Dollars (\$10.00) per day and not more  
552 than Fifteen Dollars (\$15.00) per day, to be established by the  
553 board of supervisors. In all criminal cases in the justice court  
554 wherein the prosecution fails, the fees of jurors shall be paid by  
555 the county treasurer on order of the board of supervisors on  
556 certificate of the county attorney in all counties that have  
557 county attorneys, otherwise by the justice court judge.

558 (2) Any juror may return the fees provided as compensation  
559 for service as a juror to the county which paid for such person's  
560 service as a juror. The fees returned to the county may be  
561 earmarked for a particular purpose to be selected by the juror,  
562 including:

563 (a) The local public library;

564 (b) Local law enforcement;

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

567 (d) Any other governmental agency.

568 **SECTION 13.** Section 33-1-5, Mississippi Code of 1972, is  
569 brought forward as follows:

570 33-1-5. Any member of the Mississippi National Guard shall  
571 be exempt from jury duty upon presenting a current written  
572 statement from his superior officer that such jury service will be  
573 likely to interfere with his military duties.

574           **SECTION 14.** The Legislature recognizes the importance of  
575 assuring adequate health care services for all Mississippians, and  
576 it acknowledges that physicians are a vital component of providing  
577 such services. The Legislature finds that because of the makeup  
578 of the citizenry of the state and the percentage of citizens who  
579 are (a) Medicaid recipients, (b) State and School Employees Health  
580 Insurance Plan participants and (c) Children's Health Insurance  
581 Program participants, physicians who provide health care services  
582 to such individuals are providing an essential public service and  
583 that it is in the public interest to provide funding to further  
584 address medical malpractice insurance needs of these physicians.

585           **SECTION 15.** Section 83-48-5, Mississippi Code of 1972, is  
586 amended as follows:

587           83-48-5. (1) There is created the Medical Malpractice  
588 Insurance Availability Plan that shall be funded by the  
589 participants in the plan. The plan shall be administered by the  
590 Tort Claims Board created under Section 11-46-18.

591           (2) (a) The plan shall provide coverage for medical  
592 malpractice to hospitals, institutions for the aged or infirm, or  
593 other health care facilities licensed by the State of Mississippi,  
594 physicians, nurses or other personnel who are duly licensed to  
595 practice in a hospital or other health care facility licensed by  
596 the State of Mississippi. Participation in the plan shall be  
597 voluntary for any hospital, institution for the aged or infirm, or  
598 other health care facilities licensed by the State of Mississippi,  
599 physicians, nurses and any other personnel who are duly licensed  
600 to practice in a hospital or other health care facility licensed  
601 by the State of Mississippi. However, no state entity may  
602 participate in the plan. The term "state" as used in this  
603 subsection has the meaning ascribed to that term under Section  
604 11-46-1. The plan shall make available tail (extended reporting  
605 period) coverage for participants of the plan at an additional  
606 premium assessment for such coverage. The plan shall make

607 available prior acts extended reporting period coverage  
608 (retroactive to the inception date of the physician's last medical  
609 malpractice policy) for participants of the plan at an additional  
610 premium assessment for such coverage. The board shall encourage  
611 participation in the insurance industry market. Any duly licensed  
612 qualified Mississippi agent who writes a policy under the plan may  
613 receive a commission not to exceed five percent (5%) of the  
614 premium assessment as full compensation.

615 (b) The limits of coverage under the plan shall be as  
616 follows:

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

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

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

630 (iv) For prior acts extended reporting period  
631 coverage, the plan shall provide the same limits of coverage as  
632 designated in subparagraphs (i) and (ii) of this paragraph (b).  
633 For the purpose of providing funds, in addition to assessments,  
634 for prior acts extending reporting period coverage, the  
635 Mississippi Tort Claims Board shall use monies in the special fund  
636 created under Section 17 of House Bill No. \_\_\_\_\_, First  
637 Extraordinary Session of 2004.

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

640 shall be on an actuarially sound basis and calculated to be  
641 self-supporting. Policies for prior acts extended reporting  
642 period coverage shall be underwritten at the lowest premium rates  
643 possible on an actuarially sound basis.

644 (4) Every participant in the plan shall:

645 (a) File with the board a written agreement, the form  
646 and substance of which shall be determined by the board, signed by  
647 a duly authorized representative of the participant, that the  
648 participant will provide services to (i) Medicaid recipients, (ii)  
649 State and School Employees Health Insurance Plan participants, and  
650 (iii) Children's Health Insurance Program participants. The  
651 agreement must provide, among other things, that the participant  
652 will provide services to Medicaid recipients, State and School  
653 Employees Health Insurance Plan participants, and Children's  
654 Health Insurance Program participants in a manner that is  
655 comparable to the services provided to all other patients and  
656 shall be made without balance billing to the patient; and

657 (b) Pay all assessments and premiums established by the  
658 board.

659 (5) This chapter shall not preclude any hospital,  
660 institution for the aged or infirm, or other health care  
661 facilities licensed by the State of Mississippi, physician, nurse  
662 or other personnel who are duly licensed to practice in a hospital  
663 or other health care facility licensed by the State of Mississippi  
664 from procuring medical malpractice insurance from any source other  
665 than the plan.

666 (6) Notwithstanding any other provision of this section to  
667 the contrary, the Mississippi Tort Claims Board shall use so much  
668 of the monies in the special fund created in Section 17 of House  
669 Bill No. \_\_\_\_\_, First Extraordinary Session of 2004, as may be  
670 necessary to pay all medical malpractice insurance premiums for  
671 not more than an aggregate of twenty-five (25) physicians  
672 described in Section 11-46-1(f)(ii).

673           (7) The Tort Claims Board shall have the following powers  
674 and duties:

675           (a) To expend money from a loan from the Tort Claims  
676 Fund in an amount not to exceed Five Hundred Thousand Dollars  
677 (\$500,000.00) for the start-up costs of administering the Medical  
678 Malpractice Insurance Availability Plan;

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

680           (c) To charge and collect assessments and fees from  
681 participants in the plan;

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

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

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

694           (g) To use monies in the special fund created under  
695 Section 17 of House Bill No. \_\_\_\_\_, First Extraordinary Session of  
696 2004, for the purposes provided in subsections (2)(b)(iv) and (6)  
697 of this section.

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

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

706                   (i) Certification by a qualified actuary that the  
707 plan is solvent;  
708                   (ii) The number of participants in the plan;  
709                   (iii) The number of claims filed and paid by the  
710 plan; and  
711                   (iv) The amount of all assessments and fees  
712 collected from the participants in the plan.

713        (8) Nothing contained in this section shall be construed as  
714 repealing, amending or superseding the provisions of any other law  
715 and, if the provisions of this section conflict with any other  
716 law, then the provisions of such other law shall govern and  
717 control to the extent of the conflict.

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

720        11-46-1. As used in this chapter the following terms shall  
721 have the meanings herein ascribed unless the context otherwise  
722 requires:

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

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

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

729               (d) "Department" means the Department of Finance and  
730 Administration.

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

733               (f) "Employee" means:

734                   (i) Any officer, employee or servant of the State  
735 of Mississippi or a political subdivision of the state, including  
736 elected or appointed officials and persons acting on behalf of the  
737 state or a political subdivision in any official capacity,  
738 temporarily or permanently, in the service of the state or a

739 political subdivision whether with or without compensation. The  
740 term "employee" shall not mean a person or other legal entity  
741 while acting in the capacity of an independent contractor under  
742 contract to the state or a political subdivision; provided,  
743 however, that for purposes of the limits of liability provided for  
744 in Section 11-46-15, the term "employee" shall include physicians  
745 under contract to provide health services with the State Board of  
746 Health, the State Board of Mental Health or any county or  
747 municipal jail facility while rendering services under such  
748 contract. The term "employee" shall also include any physician,  
749 dentist or other health care practitioner employed by the  
750 University of Mississippi Medical Center (UMMC) and its  
751 departmental practice plans who is a faculty member and provides  
752 health care services only for patients at UMMC or its affiliated  
753 practice sites. The term "employee" shall also include any  
754 physician, dentist or other health care practitioner employed by  
755 any university under the control of the Board of Trustees of State  
756 Institutions of Higher Learning who practices only on the campus  
757 of any university under the control of the Board of Trustees of  
758 State Institutions of Higher Learning. The term "employee" shall  
759 also include any physician, dentist or other health care  
760 practitioner employed by the State Veterans Affairs Board and who  
761 provides health care services for patients for the State Veterans  
762 Affairs Board. The term "employee" shall also include Mississippi  
763 Department of Human Services licensed foster parents for the  
764 limited purposes of coverage under the Tort Claims Act as provided  
765 in Section 11-46-8. For the purposes of the limits of liability  
766 provided for in Section 11-46-15 and for no other purpose under  
767 this chapter, the term "employee" also shall include any physician  
768 who provides health care services to Medicaid recipients, State  
769 and School Employees Health Insurance Plan participants and  
770 Children's Health Insurance Program participants, provided that at  
771 least thirty-five percent (35%) of the physician's patients, as

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

774 (ii) Any retired physician who provides volunteer  
775 unpaid health care services to any public entity or private  
776 entity. For the purposes of this subparagraph (ii), "public  
777 entity" means any agency, department, institution, instrumentality  
778 or political subdivision of the state, or any agency, department,  
779 institution or instrumentality of any political subdivision of the  
780 state; and "private entity" means any business, organization,  
781 corporation, association or other legal entity which is not a  
782 public entity.

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

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

788 (i) "Political subdivision" means any body politic or  
789 body corporate other than the state responsible for governmental  
790 activities only in geographic areas smaller than that of the  
791 state, including, but not limited to, any county, municipality,  
792 school district, community hospital as defined in Section  
793 41-13-10, Mississippi Code of 1972, airport authority or other  
794 instrumentality thereof, whether or not such body or  
795 instrumentality thereof has the authority to levy taxes or to sue  
796 or be sued in its own name.

797 (j) "State" means the State of Mississippi and any  
798 office, department, agency, division, bureau, commission, board,  
799 institution, hospital, college, university, airport authority or  
800 other instrumentality thereof, whether or not such body or  
801 instrumentality thereof has the authority to levy taxes or to sue  
802 or be sued in its own name.

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

805 law, customary law, court order, court rule, court decision, court  
806 opinion, court judgment or mandate, administrative rule or  
807 regulation, executive order, or principle or rule of equity.

808       **SECTION 17.** There is created in the State Treasury a special  
809 fund to the credit of the Mississippi Tort Claims Board, which  
810 shall be comprised of any funds that may be made available for the  
811 fund by the Legislature. Monies in the fund shall be expended by  
812 the Mississippi Tort Claims Board, upon appropriation by the  
813 Legislature, only for the purpose of providing additional funds  
814 for prior acts extended reporting period coverage as provided in  
815 Section 83-48-5 and for paying the medical malpractice premiums  
816 for those physicians described in Section 11-46-1(f)(ii) as  
817 provided for in Section 83-48-5. Unexpended amounts remaining in  
818 the special fund at the end of a fiscal year shall not lapse into  
819 the State General Fund, and any interest earned or investment  
820 earnings on amounts in the special fund shall be deposited to the  
821 credit of the special fund.

822       **SECTION 18.** The Tort Claims Board shall develop methods and  
823 promulgate rules and regulations to verify whether a physician  
824 meets the percentage requirement under Section 11-46-1(f) to  
825 qualify as an employee. There is created an advisory council to  
826 assist the Mississippi Tort Claims Board in determining whether a  
827 physician meets the percentage requirement under Section  
828 11-46-1(f) to qualify as an employee. The advisory council shall  
829 be composed of the Executive Director of the Mississippi Medical  
830 Association or his designee; the President of the Mississippi  
831 Medical and Surgical Association or his designee; the  
832 administrator of the Mississippi Tort Claims Board or his  
833 designee; two (2) physicians appointed by the Lieutenant Governor;  
834 two (2) physicians appointed by the Speaker of the House of  
835 Representatives and three (3) nonphysician members, one (1) from  
836 each Supreme Court district, appointed by the Governor.

837           **SECTION 19.** (1) Any medical provider or hospital or nursing  
838 home or other medical facility shall charge no more than the  
839 following amounts to patients or their representatives for  
840 photocopying any patient's records: Twenty Dollars (\$20.00) for  
841 pages one (1) through twenty (20); One Dollar (\$1.00) per page for  
842 the next eighty (80) pages; Fifty Cents (50¢) per page for all  
843 pages thereafter. Ten percent (10%) of the total charge may be  
844 added for postage and handling. Fifteen Dollars (\$15.00) may be  
845 recovered by the medical provider or hospital or nursing home or  
846 other medical facility for retrieving medical records in archives  
847 at a location off the premises where the facility/office is  
848 located.

849           (2) A physician shall only charge normal, reasonable and  
850 customary charges for a deposition related to a patient that the  
851 physician is treating or has treated.

852           **SECTION 20.** Section 73-25-27, Mississippi Code of 1972, is  
853 amended as follows:

854           73-25-27. The Mississippi State Board of Medical Licensure  
855 after notice and opportunity for a hearing to the licentiate, is  
856 authorized to suspend or revoke for any cause named herein any  
857 license it has issued, or the renewal thereof, that authorizes any  
858 person to practice medicine, osteopathy, or any other method of  
859 preventing, diagnosing, relieving, caring for, or treating, or  
860 curing disease, injury or other bodily condition. The procedure  
861 for suspension of a license for being out of compliance with an  
862 order for support, and the procedure for the reissuance or  
863 reinstatement of a license suspended for that purpose, and the  
864 payment of any fees for the reissuance or reinstatement of a  
865 license suspended for that purpose, shall be governed by Section  
866 93-11-157 or 93-11-163, as the case may be. If there is any  
867 conflict between any provision of Section 93-11-157 or 93-11-163  
868 and any provision of this chapter, the provisions of Section  
869 93-11-157 or 93-11-163, as the case may be, shall control.

870           Such notice shall be effected by registered mail or personal  
871 service setting forth the particular reasons for the proposed  
872 action and fixing a date not less than thirty (30) days or more  
873 than sixty (60) days from the date of such mailing or such  
874 service, at which time the licentiate shall be given an  
875 opportunity for a prompt and fair hearing. For the purpose of  
876 such hearing the board, acting by and through its executive  
877 office, may subpoena persons and papers on its own behalf and on  
878 behalf of licentiate, including records obtained pursuant to  
879 Section 73-25-28, may administer oaths and such testimony when  
880 properly transcribed, together with such papers and exhibits,  
881 shall be admissible in evidence for or against the licentiate. At  
882 such hearing licentiate may appear by counsel and personally in  
883 his own behalf. Any person sworn and examined as a witness in  
884 such hearing shall not be held to answer criminally, nor shall any  
885 papers or documents produced by such witness be competent evidence  
886 in any criminal proceedings against such witness other than for  
887 perjury in delivering his evidence. Any patient or a  
888 representative of the patient who has suffered harm by a physician  
889 subject to a hearing under this section shall have the right to  
890 attend any crucial proceedings conducted by the Board of Medical  
891 Licensure for disciplinary purposes regarding such physician as to  
892 that patient's treatment. Notice shall be provided to the patient  
893 or his representative at the same time and in the same manner as  
894 the notice is made to the physician. On the basis of any such  
895 hearing, or upon default of the licentiate, the Board of Medical  
896 Licensure shall make a determination specifying its findings of  
897 fact and conclusions of law.

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

903 the chancery court, pursuant to the provisions hereof, and the  
904 proceedings in chancery shall be conducted as other matters coming  
905 before the court. All proceedings and evidence, together with  
906 exhibits, presented at such hearing before the Board of Medical  
907 Licensure in the event of appeal shall be admissible in evidence  
908 in said court.

909 The Board of Medical Licensure may subpoena persons and  
910 papers on its own behalf and on behalf of the respondent,  
911 including records obtained pursuant to Section 73-25-28, may  
912 administer oaths, and may compel the testimony of witnesses. It  
913 may issue commissions to take testimony, and testimony so taken  
914 and sworn to shall be admissible in evidence for and against the  
915 respondent. The Board of Medical Licensure shall be entitled to  
916 the assistance of the chancery court or the chancellor in  
917 vacation, which, on petition by the board, shall issue ancillary  
918 subpoenas and petitions and may punish as for contempt of court in  
919 the event of noncompliance therewith.

920 Unless the court otherwise decrees, a license that has been  
921 suspended by the Board of Medical Licensure for a stated period of  
922 time shall automatically become valid on the expiration of that  
923 period and a license that has been suspended for an indefinite  
924 period shall become again valid if and when the Board of Medical  
925 Licensure so orders, which it may do on its own motion or on the  
926 petition of the respondent. A license that has been revoked shall  
927 not be restored to validity except: (1) after a rehearing by the  
928 Board of Medical Licensure, on petition of the respondent, for  
929 good cause shown, filed within ten (10) days, immediately  
930 following the service on him of the order or judgment of the Board  
931 of Medical Licensure revoking his license or (2) by order of the  
932 court, on petition as aforesaid. Any licentiate whose license  
933 becomes again valid after a period of suspension or after it has  
934 been restored to validity after a rehearing or by an order of the  
935 court, shall record it again in the office of the clerk of the

936 circuit court of the county in which he resides in conformity with  
937 the requirements of Section 73-25-13. Nothing in this chapter  
938 shall be construed as limiting or revoking the authority of any  
939 court or of any licensing or registering officer or board, other  
940 than the State Board of Medical Licensure, to suspend, revoke and  
941 reinstate licenses and to cancel registrations under the  
942 provisions of Section 41-29-311.

943 **SECTION 21.** In any medical malpractice action with multiple  
944 defendants, the medical privilege shall be considered waived by  
945 and between all defendants.

946 **SECTION 22.** Any product sold or distributed in Mississippi  
947 by any manufacturer or distributor licensed to do business or  
948 doing business in Mississippi shall publish statewide notice of  
949 any recall of any product or its component parts within thirty  
950 (30) days of the recall. Any manufacturer or distributor who  
951 fails to provide notice of a recall as required by this section  
952 shall, upon conviction, be fined Fifty Thousand Dollars  
953 (\$50,000.00) for each violation. The Attorney General shall  
954 enforce compliance with the provisions of this section.

955 **SECTION 23.** If the parties to a cause of action agree, any  
956 claim filed alleging damages may receive a bench trial which shall  
957 be conducted in two hundred seventy (270) days or less after the  
958 cause of action has been filed. The cause of action shall be a  
959 priority item in the court.

960 **SECTION 24. Medical review panel.**

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

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

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

965 (ii) "Health care provider" means a person,  
966 partnership, limited liability partnership, limited liability  
967 company, corporation, facility, or institution licensed by this  
968 state to provide health care or professional services as a

969 physician, hospital, institution for the aged or infirm, community  
970 blood center, tissue bank, dentist, registered or licensed  
971 practical nurse or certified nurse assistant, ambulance service,  
972 certified registered nurse anesthetist, nurse-midwife, licensed  
973 midwife, pharmacist, optometrist, podiatrist, chiropractor,  
974 physical therapist, occupational therapist, psychologist, social  
975 worker, licensed professional counselor, or any nonprofit facility  
976 considered tax-exempt under Section 501(c)(3), Internal Revenue  
977 Code, pursuant to 26 USC 501(c)(3), for the diagnosis and  
978 treatment of cancer or cancer-related diseases, whether or not  
979 such a facility is required to be licensed by this state, or any  
980 professional corporation a health care provider is authorized to  
981 form under the Mississippi Code of 1972, or any partnership,  
982 limited liability partnership, limited liability company, or  
983 corporation whose business is conducted principally by health care  
984 providers, or an officer, employee, partner, member, shareholder,  
985 or agent thereof acting in the course and scope of his employment.

986 (iii) "Malpractice" means any unintentional tort  
987 or any breach of contract based on health care or professional  
988 services rendered, or which should have been rendered, by a health  
989 care provider, to a patient, including failure to render services  
990 timely and the handling of a patient, including loading and  
991 unloading of a patient, and also includes all legal responsibility  
992 of a health care provider arising from acts or omissions in the  
993 training or supervision of health care providers, or from defects  
994 in blood, tissue, transplants, drugs and medicines, or from  
995 defects in or failures of prosthetic devices, implanted in or used  
996 on or in the person of a patient.

997 (b) (i) All malpractice claims against health care  
998 providers, other than claims validly agreed for submission to a  
999 lawfully binding arbitration procedure, shall be reviewed by a  
1000 medical review panel as provided in this section unless all  
1001 parties specifically waive the use of the medical review panel.

1002                   (ii) An action against a health care provider or  
1003 his insurer commenced in any court shall be presented to a medical  
1004 review panel and an opinion rendered by the panel pursuant to this  
1005 section, and the court's request for review shall constitute a  
1006 stay pending the panel's decision.

1007                   (iii) The request for review of a malpractice  
1008 claim under this section shall be made by the court on its own  
1009 motion or on the motion of any party.

1010           (c) (i) The request for review must be in writing,  
1011 delivered to the board in person or by certified or registered  
1012 United States mail, and include as an exhibit the complaint filed.

1013                   (ii) Each defendant shall file a written answer  
1014 within thirty (30) days of service of the request. If the  
1015 defendant fails to file an answer as required, the board shall  
1016 notify the defendant of the obligation to file and penalty for  
1017 failure to file; notice shall be by certified or registered United  
1018 States mail. If the defendant has not filed within thirty (30)  
1019 days of the receipt of the notice specified in this subparagraph  
1020 (ii), the request for review shall be dismissed; the panel, if  
1021 formed, shall be dissolved, and the plaintiff shall be allowed to  
1022 proceed in court upon the complaint filed.

1023           (2) **Dismissal of review; dissolution of panel.**

1024           (a) During the pendency of proceedings under this  
1025 section, a health care provider against whom a claim has been  
1026 filed may raise any exception or defenses available pursuant to  
1027 Mississippi law, whether a procedural, statute of limitations or  
1028 other exception or defense, at any time without need for  
1029 completion of the review process by the medical review panel.

1030           (b) If the court finds for the party raising the  
1031 exception or defense, that party shall be dismissed. If there are  
1032 no defendants remaining, the panel, if established, shall be  
1033 dissolved.

1034           (3) **Composition and selection of panel.**

1035           (a) The medical review panel shall consist of two (2)  
1036 physicians who each hold an unlimited license to practice medicine  
1037 in Mississippi, one (1) patient advocate appointed by the Tort  
1038 Claims Board and one (1) attorney who shall be the nonvoting chair  
1039 of the panel. The parties may agree on the attorney member of the  
1040 medical review panel within thirty (30) days after the filing of  
1041 the answer; if no agreement can be reached, then the attorney  
1042 member of the medical review panel shall be selected as follows:

1043           (i) The board shall draw five (5) names at random  
1044 from the list of attorneys maintained by the board who have  
1045 medical malpractice experience. The names of judges, magistrates,  
1046 district attorneys and assistant district attorneys shall be  
1047 excluded if drawn and new names drawn in their place. After  
1048 selection of the attorney names, the board shall notify the  
1049 parties of the attorney names from which the parties, within five  
1050 (5) days, may choose the attorney member of the panel. If no  
1051 agreement can be reached within five (5) days, the parties shall  
1052 immediately initiate a procedure of selecting the attorney by each  
1053 striking two (2) names alternately, with the plaintiff striking  
1054 first and so advising the defendant of the name of the attorney so  
1055 stricken; thereafter, the defendant and the plaintiff shall  
1056 alternately strike until both sides have stricken two (2) names  
1057 and the remaining name shall be the attorney member of the panel.  
1058 If either the plaintiff or defendant fails to strike, the board  
1059 shall strike for that party within five (5) additional days.

1060           (ii) After the striking, the board shall notify  
1061 the attorney and all parties of the name of the selected attorney.  
1062 An attorney who has a conflict of interest shall decline to serve.

1063           (b) The attorney shall act as chairman of the panel and  
1064 shall have no vote. The chairman shall preside at panel meetings,  
1065 advise the panel as to questions of law, and shall prepare the  
1066 opinion of the panel as required in subsection (7) of this  
1067 section. It is the duty of the chairman to expedite the selection

1068 of the other panel members, to convene the panel and expedite the  
1069 panel's review of the proposed complaint. The attorney chairman  
1070 shall establish, by order, a reasonable schedule for submission of  
1071 evidence to the medical review panel, but must allow sufficient  
1072 time for the parties to make full and adequate presentation of  
1073 related facts and authorities within one hundred twenty (120) days  
1074 following selection of the panel.

1075 (c) The qualification and selection of physician  
1076 members of the medical review panel shall be as follows:

1077 (i) All physicians who hold a license to practice  
1078 medicine in the State of Mississippi and who are engaged in the  
1079 active practice of medicine in this state, whether in the teaching  
1080 profession or otherwise, shall be available for selection and,  
1081 unless excused for cause, required to serve upon selection.

1082 (ii) Each party to the action shall have the right  
1083 to select one (1) physician and upon selection the physician shall  
1084 be required to serve.

1085 (iii) When there are multiple plaintiffs or  
1086 defendants, there shall be only one (1) physician selected per  
1087 side. The plaintiff, whether single or multiple, shall have the  
1088 right to select one (1) physician, and the defendant, whether  
1089 single or multiple, shall have the right to select one (1)  
1090 physician.

1091 (iv) If any defendant is a physician, the  
1092 physicians selected must be of the same specialty as at least one  
1093 (1) physician defendant.

1094 (v) Parties and their attorneys are absolutely  
1095 prohibited from contact with the physician whose name is  
1096 submitted, either before or after submission. No physician may be  
1097 informed of the method of any panel member's selection.

1098 (vi) No physician may be selected to serve on more  
1099 than four (4) medical review panels in a twelve-month period.

1100 (vii) The physician selection process shall be  
1101 completed within thirty (30) days of the selection of the attorney  
1102 chairman.

1103 (d) Attorneys and physicians with any financial,  
1104 employment, or personal or family ties to any party or attorney  
1105 for a party shall not serve on a panel. Any conflict that cannot  
1106 be resolved shall be decided by the court upon the motion of any  
1107 party.

1108 (4) **Evidence.**

1109 (a) The evidence to be considered by the medical review  
1110 panel shall be promptly submitted by the respective parties in  
1111 written form only.

1112 (b) The evidence may consist of:

1113 (i) Medical records;

1114 (ii) Sworn statements;

1115 (iii) Expert reports signed by experts;

1116 (iv) Deposition transcripts;

1117 (v) Any other evidence allowed by the medical  
1118 review panel or submitted by the parties.

1119 (c) Depositions of the parties only may be taken, and  
1120 may be taken prior to the convening of the panel.

1121 (d) Upon request of any party or panel member, the  
1122 board shall issue subpoenas and subpoenas duces tecum in aid of  
1123 the taking of depositions and the production of documentary  
1124 evidence for inspection, copying or both.

1125 (e) The plaintiff must sign a valid authorization  
1126 allowing defendants to obtain the plaintiff's medical records.  
1127 The defendant shall treat all medical records in a confidential  
1128 manner and shall not disclose the contents of the records to  
1129 anyone other than the panel or other experts; all other experts  
1130 must treat the plaintiff's records as confidential.

1131 (f) The board shall send a copy of the evidence to each  
1132 member of the panel.

1133           (5) **Hearings.** (a) After submission of all evidence and  
1134 upon ten (10) days' notice to the other side, either party or the  
1135 panel shall have the right to convene the panel at a time and  
1136 place agreeable to the members of the panel; each party is  
1137 entitled to request only one (1) hearing. The panel may hold as  
1138 many hearings as it chooses. The purpose of a hearing is to ask  
1139 questions as to additional evidence needed and to afford an  
1140 opportunity to make oral presentation of the facts. The chairman  
1141 of the panel shall preside at all hearings, which shall be  
1142 informal.

1143           (b) The following are locations where hearings may be  
1144 held:

1145                   (i) At a courthouse or other available public  
1146 building in the county where the act or omission is alleged to  
1147 have occurred.

1148                   (ii) The attorney chairman shall decide the  
1149 location in the event of any dispute.

1150                   (iii) Private offices in the county where the act  
1151 or omission is alleged to have occurred may be used if there is no  
1152 cost or if the parties pay for the cost.

1153           (6) **Panel deliberations and decision.** After receiving all  
1154 evidence from the parties, the panel shall convene to discuss the  
1155 evidence presented not less than one (1) time, and, not later than  
1156 sixty (60) days after receiving all evidence from the parties,  
1157 shall render a written decision signed by the panelists, together  
1158 with written reasons for their conclusions, as follows:

1159                   (a) There was a breach of the appropriate standard of  
1160 care;

1161                   (b) There was not a breach of the appropriate standard  
1162 of care; or

1163                   (c) Whether the defendant or defendants failed to  
1164 comply with the appropriate standard of care cannot be determined.

1165           (7) **Form of decision.** The decision reached by the medical  
1166 review panel shall be in writing, shall state the facts upon which  
1167 it is based, shall be of public record, and shall be admissible as  
1168 evidence in the civil case filed.

1169           (8) **Panelist immunity.** A panelist shall have absolute  
1170 immunity from civil liability for all communications, findings,  
1171 opinions and conclusions made in the course and scope of duties  
1172 prescribed by this section.

1173           (9) **Panelist compensation.**

1174                 (a) (i) Each physician member of the medical review  
1175 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for  
1176 all work performed as a member of the panel, and in addition  
1177 thereto, per diem as provided in Section 25-3-69, Mississippi Code  
1178 of 1972, and travel expenses as would be calculated for a state  
1179 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1180                 (ii) The attorney chairman of the medical review  
1181 panel shall be paid at the rate of One Hundred Fifty Dollars  
1182 (\$150.00) per hour, not to exceed a total of Three Thousand  
1183 Dollars (\$3,000.00), for all work performed as a member of the  
1184 panel, and in addition thereto, per diem as provided in Section  
1185 25-3-69, Mississippi Code of 1972, and travel expenses as would be  
1186 calculated for a state employee pursuant to Section 25-3-41,  
1187 Mississippi Code of 1972.

1188                 (b) The costs of the medical review panel shall be  
1189 split between the parties. The panel members shall by affidavit  
1190 request the payment due under this subsection (9) from the board,  
1191 which in turn shall bill the parties for the proportionate share  
1192 of each party.

1193           (10) **Delivery and effect of decision.** The chairman shall  
1194 submit a copy of the panel's report to the board and all parties  
1195 and attorneys by registered or certified mail within five (5) days  
1196 after the panel renders its opinion. The panel's report shall be  
1197 of public record.

1198           **SECTION 25.** Section 11-46-19, Mississippi Code of 1972, is  
1199 amended as follows:

1200           **[Until July 1, 2005, this section shall read as follows:]**

1201           11-46-19. (1) The board shall have the following powers:

1202                   (a) To provide oversight over the Tort Claims Fund;

1203                   (b) To approve any award made from the Tort Claims  
1204 Fund;

1205                   (c) To pay all necessary expenses attributable to the  
1206 operation of the Tort Claims Fund from such fund;

1207                   (d) To assign litigated claims against governmental  
1208 entities other than political subdivisions to competent attorneys  
1209 unless such governmental entity has a staff attorney who is  
1210 competent to represent the governmental entity and is approved by  
1211 the board; the board shall give primary consideration to attorneys  
1212 practicing in the jurisdiction where the claim arose in assigning  
1213 cases; attorneys hired to represent a governmental entity other  
1214 than a political subdivision shall be paid according to the  
1215 department fee schedule;

1216                   (e) To approve all claimants' attorney fees in claims  
1217 against the state;

1218                   (f) To employ on a full-time basis a staff attorney who  
1219 shall possess the minimum qualifications required to be a member  
1220 of The Mississippi Bar, and such other staff as it may deem  
1221 necessary to carry out the purposes of this chapter; the employees  
1222 in the positions approved by the board shall be hired by the  
1223 director, shall be employees of the department, and shall be  
1224 compensated from the Tort Claims Fund;

1225                   (g) To contract with one or more reputable insurance  
1226 consulting firms as may be necessary;

1227                   (h) To purchase any policies of liability insurance and  
1228 to administer any plan of self-insurance or policies of liability  
1229 insurance required for the protection of the state against claims  
1230 and suits brought under this chapter;

1231           (i) To expend money from the Tort Claims Fund for the  
1232 purchase of any policies of liability insurance and the payment of  
1233 any award or settlement of a claim against the state under the  
1234 provisions of this chapter or of a claim against any school  
1235 district, junior college or community college district, or state  
1236 agency, arising from the operation of school buses or other  
1237 vehicles, under the provisions of Section 37-41-42;

1238           (j) To cancel, modify or replace any policy or policies  
1239 of liability insurance procured by the board;

1240           (k) To issue certificates of coverage to governmental  
1241 entities, including any political subdivision participating in any  
1242 plan of liability protection approved by the board;

1243           (l) To review and approve or reject any plan of  
1244 liability insurance or self-insurance reserves proposed or  
1245 provided by political subdivisions if such plan is intended to  
1246 serve as security for risks of claims and suits against them for  
1247 which immunity has been waived under this chapter;

1248           (m) To administer disposition of claims against the  
1249 Tort Claims Fund;

1250           (n) To withhold issuance of any warrants payable from  
1251 funds of a participating state entity should such entity fail to  
1252 make required contributions to the Tort Claims Fund in the time  
1253 and manner prescribed by the board;

1254           (o) To develop a comprehensive statewide list of  
1255 attorneys who are qualified to represent the state and any  
1256 employee thereof named as a defendant in a claim brought under  
1257 this chapter against the state or such employee;

1258           (p) To develop a schedule of fees for paying attorneys  
1259 defending claims against the state or an employee thereof;

1260           (q) To adopt and promulgate such reasonable rules and  
1261 regulations and to do and perform all such acts as are necessary  
1262 to carry out its powers and duties under this chapter;

1263 (r) To establish and assess premiums to be paid by  
1264 governmental entities required to participate in the Tort Claims  
1265 Fund;

1266 (s) To contract with a third-party administrator to  
1267 process claims against the state under this chapter;

1268 (t) To annually submit its budget request to the  
1269 Legislature as a state agency;

1270 (u) To dispose of salvage obtained in settlement or  
1271 payment of any claim at fair market value by such means and upon  
1272 such terms as the board may think best; \* \* \*

1273 (v) To administer the Medical Malpractice Insurance  
1274 Availability Plan under Section 83-48-5; and

1275 (w) To act as the board as required under House Bill  
1276 No. \_\_\_\_\_, 2004 First Extraordinary Session, dealing with medical  
1277 malpractice claims as follows:

1278 (i) To accept filings under the act;

1279 (ii) To coordinate the selection of panels;

1280 (iii) To maintain lists of attorneys eligible for  
1281 appointment as attorney chairmen;

1282 (iv) To promulgate rules in reference to the  
1283 qualifications of attorneys serving as panel members;

1284 (v) To promulgate rules and regulations necessary  
1285 to implement the provisions of Section 24 of House Bill No. \_\_\_\_\_,  
1286 2004 First Extraordinary Session; and

1287 (vi) To provide general administrative support.

1288 (2) Policies of liability insurance purchased for the  
1289 protection of governmental entities against claims and suits  
1290 brought under this chapter shall be purchased pursuant to the  
1291 competitive bidding procedures set forth in Section 31-7-13.

1292 (3) The department shall have the following powers and  
1293 duties:

1294 (a) To annually report to the Legislature concerning  
1295 each comprehensive plan of liability protection established

1296 pursuant to Section 11-46-17(2). Such report shall include a  
1297 comprehensive analysis of the cost of the plan, a breakdown of the  
1298 cost to participating state entities, and such other information  
1299 as the department may deem necessary.

1300 (b) To provide the board with any staff and meeting  
1301 facilities as may be necessary to carry out the duties of the  
1302 board as provided in this chapter.

1303 (c) To submit the board's budget request for the  
1304 initial year of operation of the board in order to authorize  
1305 expenditures for the 1993-1994 fiscal year and for the  
1306 appropriation of such general funds as shall be required for the  
1307 commencement of its activities.

1308 **[From and after July 1, 2005, this section shall read as**  
1309 **follows:]**

1310 11-46-19. (1) The board shall have the following powers:

1311 (a) To provide oversight over the Tort Claims Fund;

1312 (b) To approve any award made from the Tort Claims  
1313 Fund;

1314 (c) To pay all necessary expenses attributable to the  
1315 operation of the Tort Claims Fund from such fund;

1316 (d) To assign litigated claims against governmental  
1317 entities other than political subdivisions to competent attorneys  
1318 unless such governmental entity has a staff attorney who is  
1319 competent to represent the governmental entity and is approved by  
1320 the board; the board shall give primary consideration to attorneys  
1321 practicing in the jurisdiction where the claim arose in assigning  
1322 cases; attorneys hired to represent a governmental entity other  
1323 than a political subdivision shall be paid according to the  
1324 department fee schedule;

1325 (e) To approve all claimants' attorney fees in claims  
1326 against the state;

1327 (f) To employ on a full-time basis a staff attorney who  
1328 shall possess the minimum qualifications required to be a member

1329 of The Mississippi Bar, and such other staff as it may deem  
1330 necessary to carry out the purposes of this chapter; the employees  
1331 in the positions approved by the board shall be hired by the  
1332 director, shall be employees of the department, and shall be  
1333 compensated from the Tort Claims Fund;

1334 (g) To contract with one or more reputable insurance  
1335 consulting firms as may be necessary;

1336 (h) To purchase any policies of liability insurance and  
1337 to administer any plan of self-insurance or policies of liability  
1338 insurance required for the protection of the state against claims  
1339 and suits brought under this chapter;

1340 (i) To expend money from the Tort Claims Fund for the  
1341 purchase of any policies of liability insurance and the payment of  
1342 any award or settlement of a claim against the state under the  
1343 provisions of this chapter or of a claim against any school  
1344 district, junior college or community college district, or state  
1345 agency, arising from the operation of school buses or other  
1346 vehicles, under the provisions of Section 37-41-42;

1347 (j) To cancel, modify or replace any policy or policies  
1348 of liability insurance procured by the board;

1349 (k) To issue certificates of coverage to governmental  
1350 entities, including any political subdivision participating in any  
1351 plan of liability protection approved by the board;

1352 (l) To review and approve or reject any plan of  
1353 liability insurance or self-insurance reserves proposed or  
1354 provided by political subdivisions if such plan is intended to  
1355 serve as security for risks of claims and suits against them for  
1356 which immunity has been waived under this chapter;

1357 (m) To administer disposition of claims against the  
1358 Tort Claims Fund;

1359 (n) To withhold issuance of any warrants payable from  
1360 funds of a participating state entity should such entity fail to

1361 make required contributions to the Tort Claims Fund in the time  
1362 and manner prescribed by the board;

1363 (o) To develop a comprehensive statewide list of  
1364 attorneys who are qualified to represent the state and any  
1365 employee thereof named as a defendant in a claim brought under  
1366 this chapter against the state or such employee;

1367 (p) To develop a schedule of fees for paying attorneys  
1368 defending claims against the state or an employee thereof;

1369 (q) To adopt and promulgate such reasonable rules and  
1370 regulations and to do and perform all such acts as are necessary  
1371 to carry out its powers and duties under this chapter;

1372 (r) To establish and assess premiums to be paid by  
1373 governmental entities required to participate in the Tort Claims  
1374 Fund;

1375 (s) To contract with a third-party administrator to  
1376 process claims against the state under this chapter;

1377 (t) To annually submit its budget request to the  
1378 Legislature as a state agency;

1379 (u) To dispose of salvage obtained in settlement or  
1380 payment of any claim at fair market value by such means and upon  
1381 such terms as the board may think best; and

1382 (v) To act as the board as required under House Bill  
1383 No. \_\_\_\_\_, 2004 First Extraordinary Session, dealing with medical  
1384 malpractice claims as follows:

1385 (i) To accept filings under the act;

1386 (ii) To coordinate the selection of panels;

1387 (iii) To maintain lists of attorneys eligible for  
1388 appointment as attorney chairmen;

1389 (iv) To promulgate rules in reference to the  
1390 qualifications of attorneys serving as panel members;

1391 (v) To promulgate rules and regulations necessary  
1392 to implement the provisions of Section 24 of House Bill No. \_\_\_\_\_,  
1393 2004 First Extraordinary Session; and

1394                           (vi) To provide general administrative support.

1395           (2) Policies of liability insurance purchased for the  
1396 protection of governmental entities against claims and suits  
1397 brought under this chapter shall be purchased pursuant to the  
1398 competitive bidding procedures set forth in Section 31-7-13.

1399           (3) The department shall have the following powers and  
1400 duties:

1401                   (a) To annually report to the Legislature concerning  
1402 each comprehensive plan of liability protection established  
1403 pursuant to Section 11-46-17(2). Such report shall include a  
1404 comprehensive analysis of the cost of the plan, a breakdown of the  
1405 cost to participating state entities, and such other information  
1406 as the department may deem necessary.

1407                   (b) To provide the board with any staff and meeting  
1408 facilities as may be necessary to carry out the duties of the  
1409 board as provided in this chapter.

1410                   (c) To submit the board's budget request for the  
1411 initial year of operation of the board in order to authorize  
1412 expenditures for the 1993-1994 fiscal year and for the  
1413 appropriation of such general funds as shall be required for the  
1414 commencement of its activities.

1415           **SECTION 26.** If any provision of this act is held by a court  
1416 to be invalid, such invalidity shall not affect the remaining  
1417 provisions of this act, and to this end the provisions of this act  
1418 are declared severable.

1419           **SECTION 27.** This act shall take effect and be in force from  
1420 and after July 1, 2004, and Sections 1 through 7 of this act shall  
1421 apply to all causes of action filed on or after that date.