

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

To: Judiciary A

HOUSE BILL NO. 13

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 blindness, third degree burns, loss of
128 reproductive capabilities or actual economic damages.

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

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

135 11-1-63. Subject to the provisions of Section 11-1-64, in
136 any action for damages caused by a product except for commercial
137 damage to the product itself:

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

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

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

148 3. The product was designed in a defective
149 manner, or

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

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

156 (iii) The defective and unreasonably dangerous
157 condition of the product proximately caused the damages for which
158 recovery is sought.

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

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

176 (ii) An adequate product warning or instruction is
177 one that a reasonably prudent person in the same or similar
178 circumstances would have provided with respect to the danger and
179 that communicates sufficient information on the dangers and safe
180 use of the product, taking into account the characteristics of,
181 and the ordinary knowledge common to an ordinary consumer who
182 purchases the product; or in the case of a prescription drug,

183 medical device or other product that is intended to be used only
184 under the supervision of a physician or other licensed
185 professional person, taking into account the characteristics of,
186 and the ordinary knowledge common to, a physician or other
187 licensed professional who prescribes the drug, device or other
188 product.

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

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

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

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

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

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

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

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

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

246 11-1-64. (1) A defendant whose liability is based solely on
247 his status as a seller in the stream of commerce may be dismissed
248 from a products liability claim as provided in this section.

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

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

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

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

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

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

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

283 11-1-65. (1) In any action in which punitive damages are
284 sought:

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

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

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

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

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

312 misconduct; and any other circumstances shown by the evidence that
313 bear on determining a proper amount of punitive damages. The
314 trier of fact shall be instructed that the primary purpose of
315 punitive damages is to punish the wrongdoer and deter similar
316 misconduct in the future by the defendant and others while the
317 purpose of compensatory damages is to make the plaintiff whole.

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

323 (ii) In determining whether the award is
324 excessive, the court shall take into consideration the following
325 factors:

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

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

334 3. The financial condition and net worth of
335 the defendant; and

336 4. In mitigation, the imposition of criminal
337 sanctions on the defendant for its conduct and the existence of
338 other civil awards against the defendant for the same conduct.

339 (2) The seller of a product other than the manufacturer
340 shall not be liable for punitive damages unless the seller
341 exercised substantial control over that aspect of the design,
342 testing, manufacture, packaging or labeling of the product that
343 caused the harm for which recovery of damages is sought; the
344 seller altered or modified the product, and the alteration or

345 modification was a substantial factor in causing the harm for
346 which recovery of damages is sought; the seller had actual
347 knowledge of the defective condition of the product at the time he
348 supplied same * * *.

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

352 (i) Twenty Million Dollars (\$20,000,000.00) for a
353 defendant with a net worth of more than One Billion Dollars
354 (\$1,000,000,000.00);

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

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

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

367 (v) Two Million Five Hundred Thousand Dollars
368 (\$2,500,000.00) for a defendant with a net worth of more than
369 Fifty Million Dollars (\$50,000,000.00) but not more than One
370 Hundred Million Dollars (\$100,000,000.00); or

371 (vi) Two percent (2%) of the defendant's net worth
372 for a defendant with a net worth of Fifty Million Dollars
373 (\$50,000,000.00) or less.

374 (b) For the purposes of determining the defendant's net
375 worth in paragraph (a), the amount of the net worth shall be
376 determined in accordance with Generally Accepted Accounting
377 Principles.

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

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

386 (i) If the defendant was convicted of a felony
387 under the laws of this state or under federal law which caused the
388 damages or injury; or

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

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

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

401 * * *

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

404 11-1-66. (1) No owner, occupant, lessee or managing agent
405 of property shall be civilly liable for the criminal acts of a
406 third party, unless such owner, occupant, lessee or managing agent
407 knew or, with the exercise of reasonable care, should have known
408 of the risk of criminal conduct on such property and the failure
409 to exercise reasonable care to deter such foreseeable conduct is a
410 proximate cause of damages to an individual or entity.

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

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

418 85-5-7. (1) As used in this section "fault" means an act or
419 omission of a person which is a proximate cause of injury or death
420 to another person or persons, damages to property, tangible or
421 intangible, or economic injury, including, but not limited to,
422 negligence, malpractice, strict liability, absolute liability or
423 failure to warn. "Fault" shall not include any tort which results
424 from an act or omission committed with a specific wrongful intent.

425 * * *

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

437 * * *

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

441 (4) Joint and several liability shall be imposed on all who
442 consciously and deliberately pursue a common plan or design to
443 commit a tortious act, or actively take part in it. Any person

444 held jointly and severally liable under this section shall have a
445 right of contribution from his fellow defendants acting in
446 concert.

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

450 * * *

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

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

456 13-5-23. All qualified persons shall be liable to serve as
457 jurors, unless excused by the court for one (1) of the following
458 causes:

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

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

464 (c) When the juror is under an emergency, fairly
465 equivalent to those mentioned in the foregoing clauses (a) and
466 (b).

467 An excuse of illness under clause (a) may be made to the
468 clerk of court outside of open court by providing the clerk with
469 either a certificate of a licensed physician or an affidavit of
470 the juror, stating that the juror is ill or that there is a
471 serious illness in the juror's family. The test of an excuse
472 under clause (b) shall be whether, if the juror were incapacitated
473 by illness or otherwise for a week, some other persons would be
474 available or could reasonably be procured to carry on the business
475 for the week, and the test of an excuse under clause (c) shall be
476 such as to be the fair equivalent, under the circumstances of that

477 prescribed under clause (b). In cases under clauses (b) and (c)
478 the excuse must be made by the juror, in open court, under oath.

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

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

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

490 13-5-25. Every citizen over sixty-five (65) years of age,
491 and everyone who has served on the regular panel as a juror in the
492 actual trial of one or more litigated cases within two (2) years,
493 shall be exempt from service if he claims the privilege; but the
494 latter class shall serve as talesmen, and on special venire, and
495 on the regular panel, if there be a deficiency of jurors. No
496 qualified juror shall be excluded because of any such reasons, but
497 the same shall be a personal privilege to be claimed by any person
498 selected for jury duty. Any citizen over sixty-five (65) years of
499 age may claim this personal privilege outside of open court by
500 providing the clerk of court with information that allows the
501 clerk to determine the validity of the claim.

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

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

508 13-5-28. If a grand, petit or other jury is ordered to be
509 drawn, the clerk thereafter shall cause each person drawn for jury

510 service to be served with a summons, either personally or by mail,
511 addressed to him at his usual residence, business or post office
512 address, requiring him to report for jury service at a specified
513 time and place.

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

516 13-5-34. A person summoned for jury service who fails to
517 appear or to complete jury service as directed shall be ordered by
518 the court to appear forthwith and show cause for his failure to
519 comply with the summons. If he fails to show good cause for
520 noncompliance with the summons he is guilty of criminal contempt
521 and upon conviction may be fined not more than One Hundred Dollars
522 (\$100.00) or imprisoned not more than three (3) days, or both.

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

525 25-7-61. (1) Fees of jurors shall be payable as follows:

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

535 No grand juror shall receive any compensation except mileage
536 unless he shall have been sworn as provided by Section 13-5-45;
537 and no petit juror except those jurors called on special venires
538 shall receive any compensation authorized under this subsection
539 except mileage unless he shall have been sworn as provided by
540 Section 13-5-71.

541 (b) Jurors making inquisitions of idiocy, lunacy or of
542 unsound mind and jurors on coroner's inquest shall be paid Five

543 Dollars (\$5.00) per day plus mileage authorized in Section 25-3-41
544 by the county treasurer on order of the board of supervisors on
545 certificate of the clerk of the chancery court in which such
546 inquisition is held.

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

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

560 (a) The local public library;

561 (b) Local law enforcement;

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

564 (d) Any other governmental agency.

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

567 33-1-5. Any member of the Mississippi National Guard shall
568 be exempt from jury duty upon presenting a current written
569 statement from his superior officer that such jury service will be
570 likely to interfere with his military duties.

571 **SECTION 14.** The Legislature recognizes the importance of
572 assuring adequate health care services for all Mississippians, and
573 it acknowledges that physicians are a vital component of providing
574 such services. The Legislature finds that because of the makeup
575 of the citizenry of the state and the percentage of citizens who

576 are (a) Medicaid recipients, (b) State and School Employees Health
577 Insurance Plan participants and (c) Children's Health Insurance
578 Program participants, physicians who provide health care services
579 to such individuals are providing an essential public service and
580 that it is in the public interest to provide funding to further
581 address medical malpractice insurance needs of these physicians.

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

584 83-48-5. (1) There is created the Medical Malpractice
585 Insurance Availability Plan that shall be funded by the
586 participants in the plan. The plan shall be administered by the
587 Tort Claims Board created under Section 11-46-18.

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

609 qualified Mississippi agent who writes a policy under the plan may
610 receive a commission not to exceed five percent (5%) of the
611 premium assessment as full compensation.

612 (b) The limits of coverage under the plan shall be as
613 follows:

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

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

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

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

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

641 (4) Every participant in the plan shall:

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

654 (b) Pay all assessments and premiums established by the
655 board.

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

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

670 (7) The Tort Claims Board shall have the following powers
671 and duties:

672 (a) To expend money from a loan from the Tort Claims
673 Fund in an amount not to exceed Five Hundred Thousand Dollars

674 (\$500,000.00) for the start-up costs of administering the Medical
675 Malpractice Insurance Availability Plan;

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

677 (c) To charge and collect assessments and fees from
678 participants in the plan;

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

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

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

691 (g) To use monies in the special fund created under
692 Section 17 of House Bill No. _____, First Extraordinary Session of
693 2004, for the purposes provided in subsections (2)(b)(iv) and (6)
694 of this section.

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

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

703 (i) Certification by a qualified actuary that the
704 plan is solvent;

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

706 (iii) The number of claims filed and paid by the
707 plan; and

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

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

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

717 11-46-1. As used in this chapter the following terms shall
718 have the meanings herein ascribed unless the context otherwise
719 requires:

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

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

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

726 (d) "Department" means the Department of Finance and
727 Administration.

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

730 (f) "Employee" means:

731 (i) Any officer, employee or servant of the State
732 of Mississippi or a political subdivision of the state, including
733 elected or appointed officials and persons acting on behalf of the
734 state or a political subdivision in any official capacity,
735 temporarily or permanently, in the service of the state or a
736 political subdivision whether with or without compensation. The
737 term "employee" shall not mean a person or other legal entity
738 while acting in the capacity of an independent contractor under

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

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

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

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

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

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

800 (k) "Law" means all species of law including, but not
801 limited to, any and all constitutions, statutes, case law, common
802 law, customary law, court order, court rule, court decision, court

803 opinion, court judgment or mandate, administrative rule or
804 regulation, executive order, or principle or rule of equity.

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

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

834 **SECTION 19.** (1) Any medical provider or hospital or nursing
835 home or other medical facility shall charge no more than the

836 following amounts to patients or their representatives for
837 photocopying any patient's records: Twenty Dollars (\$20.00) for
838 pages one (1) through twenty (20); One Dollar (\$1.00) per page for
839 the next eighty (80) pages; Fifty Cents (50¢) per page for all
840 pages thereafter. Ten percent (10%) of the total charge may be
841 added for postage and handling. Fifteen Dollars (\$15.00) may be
842 recovered by the medical provider or hospital or nursing home or
843 other medical facility for retrieving medical records in archives
844 at a location off the premises where the facility/office is
845 located.

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

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

851 73-25-27. The Mississippi State Board of Medical Licensure
852 after notice and opportunity for a hearing to the licentiate, is
853 authorized to suspend or revoke for any cause named herein any
854 license it has issued, or the renewal thereof, that authorizes any
855 person to practice medicine, osteopathy, or any other method of
856 preventing, diagnosing, relieving, caring for, or treating, or
857 curing disease, injury or other bodily condition. The procedure
858 for suspension of a license for being out of compliance with an
859 order for support, and the procedure for the reissuance or
860 reinstatement of a license suspended for that purpose, and the
861 payment of any fees for the reissuance or reinstatement of a
862 license suspended for that purpose, shall be governed by Section
863 93-11-157 or 93-11-163, as the case may be. If there is any
864 conflict between any provision of Section 93-11-157 or 93-11-163
865 and any provision of this chapter, the provisions of Section
866 93-11-157 or 93-11-163, as the case may be, shall control.

867 Such notice shall be effected by registered mail or personal
868 service setting forth the particular reasons for the proposed

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

895 A copy of such determination shall be sent by registered mail
896 or served personally upon the licentiate. The decision of the
897 Board of Medical Licensure revoking or suspending the license
898 shall become final thirty (30) days after so mailed or served
899 unless within said period the licentiate appeals the decision to
900 the chancery court, pursuant to the provisions hereof, and the
901 proceedings in chancery shall be conducted as other matters coming

902 before the court. All proceedings and evidence, together with
903 exhibits, presented at such hearing before the Board of Medical
904 Licensure in the event of appeal shall be admissible in evidence
905 in said court.

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

917 Unless the court otherwise decrees, a license that has been
918 suspended by the Board of Medical Licensure for a stated period of
919 time shall automatically become valid on the expiration of that
920 period and a license that has been suspended for an indefinite
921 period shall become again valid if and when the Board of Medical
922 Licensure so orders, which it may do on its own motion or on the
923 petition of the respondent. A license that has been revoked shall
924 not be restored to validity except: (1) after a rehearing by the
925 Board of Medical Licensure, on petition of the respondent, for
926 good cause shown, filed within ten (10) days, immediately
927 following the service on him of the order or judgment of the Board
928 of Medical Licensure revoking his license or (2) by order of the
929 court, on petition as aforesaid. Any licentiate whose license
930 becomes again valid after a period of suspension or after it has
931 been restored to validity after a rehearing or by an order of the
932 court, shall record it again in the office of the clerk of the
933 circuit court of the county in which he resides in conformity with
934 the requirements of Section 73-25-13. Nothing in this chapter

935 shall be construed as limiting or revoking the authority of any
936 court or of any licensing or registering officer or board, other
937 than the State Board of Medical Licensure, to suspend, revoke and
938 reinstate licenses and to cancel registrations under the
939 provisions of Section 41-29-311.

940 **SECTION 21.** In any medical malpractice action with multiple
941 defendants, the medical privilege shall be considered waived by
942 and between all defendants.

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

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

957 **SECTION 24. Medical review panel.**

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

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

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

962 (ii) "Health care provider" means a person,
963 partnership, limited liability partnership, limited liability
964 company, corporation, facility, or institution licensed by this
965 state to provide health care or professional services as a
966 physician, hospital, institution for the aged or infirm, community
967 blood center, tissue bank, dentist, registered or licensed

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

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

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

999 (ii) An action against a health care provider or
1000 his insurer commenced in any court shall be presented to a medical

1001 review panel and an opinion rendered by the panel pursuant to this
1002 section, and the court's request for review shall constitute a
1003 stay pending the panel's decision.

1004 (iii) The request for review of a malpractice
1005 claim under this section shall be made by the court on its own
1006 motion or on the motion of any party.

1007 (c) (i) The request for review must be in writing,
1008 delivered to the board in person or by certified or registered
1009 United States mail, and include as an exhibit the complaint filed.

1010 (ii) Each defendant shall file a written answer
1011 within thirty (30) days of service of the request. If the
1012 defendant fails to file an answer as required, the board shall
1013 notify the defendant of the obligation to file and penalty for
1014 failure to file; notice shall be by certified or registered United
1015 States mail. If the defendant has not filed within thirty (30)
1016 days of the receipt of the notice specified in this subparagraph
1017 (ii), the request for review shall be dismissed; the panel, if
1018 formed, shall be dissolved, and the plaintiff shall be allowed to
1019 proceed in court upon the complaint filed.

1020 (2) **Dismissal of review; dissolution of panel.**

1021 (a) During the pendency of proceedings under this
1022 section, a health care provider against whom a claim has been
1023 filed may raise any exception or defenses available pursuant to
1024 Mississippi law, whether a procedural, statute of limitations or
1025 other exception or defense, at any time without need for
1026 completion of the review process by the medical review panel.

1027 (b) If the court finds for the party raising the
1028 exception or defense, that party shall be dismissed. If there are
1029 no defendants remaining, the panel, if established, shall be
1030 dissolved.

1031 (3) **Composition and selection of panel.**

1032 (a) The medical review panel shall consist of two (2)
1033 physicians who each hold an unlimited license to practice medicine

1034 in Mississippi, one (1) patient advocate appointed by the Tort
1035 Claims Board and one (1) attorney who shall be the nonvoting chair
1036 of the panel. The parties may agree on the attorney member of the
1037 medical review panel within thirty (30) days after the filing of
1038 the answer; if no agreement can be reached, then the attorney
1039 member of the medical review panel shall be selected as follows:

1040 (i) The board shall draw five (5) names at random
1041 from the list of attorneys maintained by the board who have
1042 medical malpractice experience. The names of judges, magistrates,
1043 district attorneys and assistant district attorneys shall be
1044 excluded if drawn and new names drawn in their place. After
1045 selection of the attorney names, the board shall notify the
1046 parties of the attorney names from which the parties, within five
1047 (5) days, may choose the attorney member of the panel. If no
1048 agreement can be reached within five (5) days, the parties shall
1049 immediately initiate a procedure of selecting the attorney by each
1050 striking two (2) names alternately, with the plaintiff striking
1051 first and so advising the defendant of the name of the attorney so
1052 stricken; thereafter, the defendant and the plaintiff shall
1053 alternately strike until both sides have stricken two (2) names
1054 and the remaining name shall be the attorney member of the panel.
1055 If either the plaintiff or defendant fails to strike, the board
1056 shall strike for that party within five (5) additional days.

1057 (ii) After the striking, the board shall notify
1058 the attorney and all parties of the name of the selected attorney.
1059 An attorney who has a conflict of interest shall decline to serve.

1060 (b) The attorney shall act as chairman of the panel and
1061 shall have no vote. The chairman shall preside at panel meetings,
1062 advise the panel as to questions of law, and shall prepare the
1063 opinion of the panel as required in subsection (7) of this
1064 section. It is the duty of the chairman to expedite the selection
1065 of the other panel members, to convene the panel and expedite the
1066 panel's review of the proposed complaint. The attorney chairman

1067 shall establish, by order, a reasonable schedule for submission of
1068 evidence to the medical review panel, but must allow sufficient
1069 time for the parties to make full and adequate presentation of
1070 related facts and authorities within one hundred twenty (120) days
1071 following selection of the panel.

1072 (c) The qualification and selection of physician
1073 members of the medical review panel shall be as follows:

1074 (i) All physicians who hold a license to practice
1075 medicine in the State of Mississippi and who are engaged in the
1076 active practice of medicine in this state, whether in the teaching
1077 profession or otherwise, shall be available for selection and,
1078 unless excused for cause, required to serve upon selection.

1079 (ii) Each party to the action shall have the right
1080 to select one (1) physician and upon selection the physician shall
1081 be required to serve.

1082 (iii) When there are multiple plaintiffs or
1083 defendants, there shall be only one (1) physician selected per
1084 side. The plaintiff, whether single or multiple, shall have the
1085 right to select one (1) physician, and the defendant, whether
1086 single or multiple, shall have the right to select one (1)
1087 physician.

1088 (iv) If any defendant is a physician, the
1089 physicians selected must be of the same specialty as at least one
1090 (1) physician defendant.

1091 (v) Parties and their attorneys are absolutely
1092 prohibited from contact with the physician whose name is
1093 submitted, either before or after submission. No physician may be
1094 informed of the method of any panel member's selection.

1095 (vi) No physician may be selected to serve on more
1096 than four (4) medical review panels in a twelve-month period.

1097 (vii) The physician selection process shall be
1098 completed within thirty (30) days of the selection of the attorney
1099 chairman.

1100 (d) Attorneys and physicians with any financial,
1101 employment, or personal or family ties to any party or attorney
1102 for a party shall not serve on a panel. Any conflict that cannot
1103 be resolved shall be decided by the court upon the motion of any
1104 party.

1105 (4) **Evidence.**

1106 (a) The evidence to be considered by the medical review
1107 panel shall be promptly submitted by the respective parties in
1108 written form only.

1109 (b) The evidence may consist of:

1110 (i) Medical records;

1111 (ii) Sworn statements;

1112 (iii) Expert reports signed by experts;

1113 (iv) Deposition transcripts;

1114 (v) Any other evidence allowed by the medical
1115 review panel or submitted by the parties.

1116 (c) Depositions of the parties only may be taken, and
1117 may be taken prior to the convening of the panel.

1118 (d) Upon request of any party or panel member, the
1119 board shall issue subpoenas and subpoenas duces tecum in aid of
1120 the taking of depositions and the production of documentary
1121 evidence for inspection, copying or both.

1122 (e) The plaintiff must sign a valid authorization
1123 allowing defendants to obtain the plaintiff's medical records.
1124 The defendant shall treat all medical records in a confidential
1125 manner and shall not disclose the contents of the records to
1126 anyone other than the panel or other experts; all other experts
1127 must treat the plaintiff's records as confidential.

1128 (f) The board shall send a copy of the evidence to each
1129 member of the panel.

1130 (5) **Hearings.** (a) After submission of all evidence and
1131 upon ten (10) days' notice to the other side, either party or the
1132 panel shall have the right to convene the panel at a time and

1133 place agreeable to the members of the panel; each party is
1134 entitled to request only one (1) hearing. The panel may hold as
1135 many hearings as it chooses. The purpose of a hearing is to ask
1136 questions as to additional evidence needed and to afford an
1137 opportunity to make oral presentation of the facts. The chairman
1138 of the panel shall preside at all hearings, which shall be
1139 informal.

1140 (b) The following are locations where hearings may be
1141 held:

1142 (i) At a courthouse or other available public
1143 building in the county where the act or omission is alleged to
1144 have occurred.

1145 (ii) The attorney chairman shall decide the
1146 location in the event of any dispute.

1147 (iii) Private offices in the county where the act
1148 or omission is alleged to have occurred may be used if there is no
1149 cost or if the parties pay for the cost.

1150 (6) **Panel deliberations and decision.** After receiving all
1151 evidence from the parties, the panel shall convene to discuss the
1152 evidence presented not less than one (1) time, and, not later than
1153 sixty (60) days after receiving all evidence from the parties,
1154 shall render a written decision signed by the panelists, together
1155 with written reasons for their conclusions, as follows:

1156 (a) There was a breach of the appropriate standard of
1157 care;

1158 (b) There was not a breach of the appropriate standard
1159 of care; or

1160 (c) Whether the defendant or defendants failed to
1161 comply with the appropriate standard of care cannot be determined.

1162 (7) **Form of decision.** The decision reached by the medical
1163 review panel shall be in writing, shall state the facts upon which
1164 it is based, shall be of public record, and shall be admissible as
1165 evidence in the civil case filed.

1166 (8) **Panelist immunity.** A panelist shall have absolute
1167 immunity from civil liability for all communications, findings,
1168 opinions and conclusions made in the course and scope of duties
1169 prescribed by this section.

1170 (9) **Panelist compensation.**

1171 (a) (i) Each physician member of the medical review
1172 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for
1173 all work performed as a member of the panel, and in addition
1174 thereto, per diem as provided in Section 25-3-69, Mississippi Code
1175 of 1972, and travel expenses as would be calculated for a state
1176 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1177 (ii) The attorney chairman of the medical review
1178 panel shall be paid at the rate of One Hundred Fifty Dollars
1179 (\$150.00) per hour, not to exceed a total of Three Thousand
1180 Dollars (\$3,000.00), for all work performed as a member of the
1181 panel, and in addition thereto, per diem as provided in Section
1182 25-3-69, Mississippi Code of 1972, and travel expenses as would be
1183 calculated for a state employee pursuant to Section 25-3-41,
1184 Mississippi Code of 1972.

1185 (b) The costs of the medical review panel shall be
1186 split between the parties. The panel members shall by affidavit
1187 request the payment due under this subsection (9) from the board,
1188 which in turn shall bill the parties for the proportionate share
1189 of each party.

1190 (10) **Delivery and effect of decision.** The chairman shall
1191 submit a copy of the panel's report to the board and all parties
1192 and attorneys by registered or certified mail within five (5) days
1193 after the panel renders its opinion. The panel's report shall be
1194 of public record.

1195 **SECTION 25.** Section 11-46-19, Mississippi Code of 1972, is
1196 amended as follows:

1197 **[Until July 1, 2005, this section shall read as follows:]**

1198 11-46-19. (1) The board shall have the following powers:

1199 (a) To provide oversight over the Tort Claims Fund;
1200 (b) To approve any award made from the Tort Claims
1201 Fund;
1202 (c) To pay all necessary expenses attributable to the
1203 operation of the Tort Claims Fund from such fund;
1204 (d) To assign litigated claims against governmental
1205 entities other than political subdivisions to competent attorneys
1206 unless such governmental entity has a staff attorney who is
1207 competent to represent the governmental entity and is approved by
1208 the board; the board shall give primary consideration to attorneys
1209 practicing in the jurisdiction where the claim arose in assigning
1210 cases; attorneys hired to represent a governmental entity other
1211 than a political subdivision shall be paid according to the
1212 department fee schedule;
1213 (e) To approve all claimants' attorney fees in claims
1214 against the state;
1215 (f) To employ on a full-time basis a staff attorney who
1216 shall possess the minimum qualifications required to be a member
1217 of The Mississippi Bar, and such other staff as it may deem
1218 necessary to carry out the purposes of this chapter; the employees
1219 in the positions approved by the board shall be hired by the
1220 director, shall be employees of the department, and shall be
1221 compensated from the Tort Claims Fund;
1222 (g) To contract with one or more reputable insurance
1223 consulting firms as may be necessary;
1224 (h) To purchase any policies of liability insurance and
1225 to administer any plan of self-insurance or policies of liability
1226 insurance required for the protection of the state against claims
1227 and suits brought under this chapter;
1228 (i) To expend money from the Tort Claims Fund for the
1229 purchase of any policies of liability insurance and the payment of
1230 any award or settlement of a claim against the state under the
1231 provisions of this chapter or of a claim against any school

1232 district, junior college or community college district, or state
1233 agency, arising from the operation of school buses or other
1234 vehicles, under the provisions of Section 37-41-42;

1235 (j) To cancel, modify or replace any policy or policies
1236 of liability insurance procured by the board;

1237 (k) To issue certificates of coverage to governmental
1238 entities, including any political subdivision participating in any
1239 plan of liability protection approved by the board;

1240 (l) To review and approve or reject any plan of
1241 liability insurance or self-insurance reserves proposed or
1242 provided by political subdivisions if such plan is intended to
1243 serve as security for risks of claims and suits against them for
1244 which immunity has been waived under this chapter;

1245 (m) To administer disposition of claims against the
1246 Tort Claims Fund;

1247 (n) To withhold issuance of any warrants payable from
1248 funds of a participating state entity should such entity fail to
1249 make required contributions to the Tort Claims Fund in the time
1250 and manner prescribed by the board;

1251 (o) To develop a comprehensive statewide list of
1252 attorneys who are qualified to represent the state and any
1253 employee thereof named as a defendant in a claim brought under
1254 this chapter against the state or such employee;

1255 (p) To develop a schedule of fees for paying attorneys
1256 defending claims against the state or an employee thereof;

1257 (q) To adopt and promulgate such reasonable rules and
1258 regulations and to do and perform all such acts as are necessary
1259 to carry out its powers and duties under this chapter;

1260 (r) To establish and assess premiums to be paid by
1261 governmental entities required to participate in the Tort Claims
1262 Fund;

1263 (s) To contract with a third-party administrator to
1264 process claims against the state under this chapter;

1265 (t) To annually submit its budget request to the
1266 Legislature as a state agency;

1267 (u) To dispose of salvage obtained in settlement or
1268 payment of any claim at fair market value by such means and upon
1269 such terms as the board may think best; * * *

1270 (v) To administer the Medical Malpractice Insurance
1271 Availability Plan under Section 83-48-5; and

1272 (w) To act as the board as required under House Bill
1273 No. _____, 2004 First Extraordinary Session, dealing with medical
1274 malpractice claims as follows:

1275 (i) To accept filings under the act;

1276 (ii) To coordinate the selection of panels;

1277 (iii) To maintain lists of attorneys eligible for
1278 appointment as attorney chairmen;

1279 (iv) To promulgate rules in reference to the
1280 qualifications of attorneys serving as panel members;

1281 (v) To promulgate rules and regulations necessary
1282 to implement the provisions of Section 24 of House Bill No. _____,
1283 2004 First Extraordinary Session; and

1284 (vi) To provide general administrative support.

1285 (2) Policies of liability insurance purchased for the
1286 protection of governmental entities against claims and suits
1287 brought under this chapter shall be purchased pursuant to the
1288 competitive bidding procedures set forth in Section 31-7-13.

1289 (3) The department shall have the following powers and
1290 duties:

1291 (a) To annually report to the Legislature concerning
1292 each comprehensive plan of liability protection established
1293 pursuant to Section 11-46-17(2). Such report shall include a
1294 comprehensive analysis of the cost of the plan, a breakdown of the
1295 cost to participating state entities, and such other information
1296 as the department may deem necessary.

1297 (b) To provide the board with any staff and meeting
1298 facilities as may be necessary to carry out the duties of the
1299 board as provided in this chapter.

1300 (c) To submit the board's budget request for the
1301 initial year of operation of the board in order to authorize
1302 expenditures for the 1993-1994 fiscal year and for the
1303 appropriation of such general funds as shall be required for the
1304 commencement of its activities.

1305 **[From and after July 1, 2005, this section shall read as**
1306 **follows:]**

1307 11-46-19. (1) The board shall have the following powers:

1308 (a) To provide oversight over the Tort Claims Fund;

1309 (b) To approve any award made from the Tort Claims
1310 Fund;

1311 (c) To pay all necessary expenses attributable to the
1312 operation of the Tort Claims Fund from such fund;

1313 (d) To assign litigated claims against governmental
1314 entities other than political subdivisions to competent attorneys
1315 unless such governmental entity has a staff attorney who is
1316 competent to represent the governmental entity and is approved by
1317 the board; the board shall give primary consideration to attorneys
1318 practicing in the jurisdiction where the claim arose in assigning
1319 cases; attorneys hired to represent a governmental entity other
1320 than a political subdivision shall be paid according to the
1321 department fee schedule;

1322 (e) To approve all claimants' attorney fees in claims
1323 against the state;

1324 (f) To employ on a full-time basis a staff attorney who
1325 shall possess the minimum qualifications required to be a member
1326 of The Mississippi Bar, and such other staff as it may deem
1327 necessary to carry out the purposes of this chapter; the employees
1328 in the positions approved by the board shall be hired by the

1329 director, shall be employees of the department, and shall be
1330 compensated from the Tort Claims Fund;

1331 (g) To contract with one or more reputable insurance
1332 consulting firms as may be necessary;

1333 (h) To purchase any policies of liability insurance and
1334 to administer any plan of self-insurance or policies of liability
1335 insurance required for the protection of the state against claims
1336 and suits brought under this chapter;

1337 (i) To expend money from the Tort Claims Fund for the
1338 purchase of any policies of liability insurance and the payment of
1339 any award or settlement of a claim against the state under the
1340 provisions of this chapter or of a claim against any school
1341 district, junior college or community college district, or state
1342 agency, arising from the operation of school buses or other
1343 vehicles, under the provisions of Section 37-41-42;

1344 (j) To cancel, modify or replace any policy or policies
1345 of liability insurance procured by the board;

1346 (k) To issue certificates of coverage to governmental
1347 entities, including any political subdivision participating in any
1348 plan of liability protection approved by the board;

1349 (l) To review and approve or reject any plan of
1350 liability insurance or self-insurance reserves proposed or
1351 provided by political subdivisions if such plan is intended to
1352 serve as security for risks of claims and suits against them for
1353 which immunity has been waived under this chapter;

1354 (m) To administer disposition of claims against the
1355 Tort Claims Fund;

1356 (n) To withhold issuance of any warrants payable from
1357 funds of a participating state entity should such entity fail to
1358 make required contributions to the Tort Claims Fund in the time
1359 and manner prescribed by the board;

1360 (o) To develop a comprehensive statewide list of
1361 attorneys who are qualified to represent the state and any

1362 employee thereof named as a defendant in a claim brought under
1363 this chapter against the state or such employee;

1364 (p) To develop a schedule of fees for paying attorneys
1365 defending claims against the state or an employee thereof;

1366 (q) To adopt and promulgate such reasonable rules and
1367 regulations and to do and perform all such acts as are necessary
1368 to carry out its powers and duties under this chapter;

1369 (r) To establish and assess premiums to be paid by
1370 governmental entities required to participate in the Tort Claims
1371 Fund;

1372 (s) To contract with a third-party administrator to
1373 process claims against the state under this chapter;

1374 (t) To annually submit its budget request to the
1375 Legislature as a state agency;

1376 (u) To dispose of salvage obtained in settlement or
1377 payment of any claim at fair market value by such means and upon
1378 such terms as the board may think best; and

1379 (v) To act as the board as required under House Bill
1380 No. _____, 2004 First Extraordinary Session, dealing with medical
1381 malpractice claims as follows:

1382 (i) To accept filings under the act;

1383 (ii) To coordinate the selection of panels;

1384 (iii) To maintain lists of attorneys eligible for
1385 appointment as attorney chairmen;

1386 (iv) To promulgate rules in reference to the
1387 qualifications of attorneys serving as panel members;

1388 (v) To promulgate rules and regulations necessary
1389 to implement the provisions of Section 24 of House Bill No. _____,
1390 2004 First Extraordinary Session; and

1391 (vi) To provide general administrative support.

1392 (2) Policies of liability insurance purchased for the
1393 protection of governmental entities against claims and suits

1394 brought under this chapter shall be purchased pursuant to the
1395 competitive bidding procedures set forth in Section 31-7-13.

1396 (3) The department shall have the following powers and
1397 duties:

1398 (a) To annually report to the Legislature concerning
1399 each comprehensive plan of liability protection established
1400 pursuant to Section 11-46-17(2). Such report shall include a
1401 comprehensive analysis of the cost of the plan, a breakdown of the
1402 cost to participating state entities, and such other information
1403 as the department may deem necessary.

1404 (b) To provide the board with any staff and meeting
1405 facilities as may be necessary to carry out the duties of the
1406 board as provided in this chapter.

1407 (c) To submit the board's budget request for the
1408 initial year of operation of the board in order to authorize
1409 expenditures for the 1993-1994 fiscal year and for the
1410 appropriation of such general funds as shall be required for the
1411 commencement of its activities.

1412 **SECTION 26.** If any provision of this act is held by a court
1413 to be invalid, such invalidity shall not affect the remaining
1414 provisions of this act, and to this end the provisions of this act
1415 are declared severable.

1416 **SECTION 27.** This act shall take effect and be in force from
1417 and after July 1, 2004, and Sections 1 through 7 of this act shall
1418 apply to all causes of action filed on or after that date.