

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

To: Judiciary A

HOUSE BILL NO. 13
(As Passed the House)

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 AMEND SECTION 11-1-63, MISSISSIPPI CODE OF 1972, TO
5 PROVIDE IMMUNITY FOR INNOCENT SELLERS; TO BRING FORWARD SECTION
6 11-1-64, MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT
7 RELATED TO INNOCENT SELLER REVISIONS; TO AMEND SECTION 11-1-65,
8 MISSISSIPPI CODE OF 1972, TO REVISE PUNITIVE DAMAGES; TO AMEND
9 SECTION 11-1-66, MISSISSIPPI CODE OF 1972, TO REVISE PREMISES
10 LIABILITY; TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO
11 REVISE JOINT AND SEVERAL LIABILITY; TO BRING FORWARD SECTIONS
12 13-5-23, 13-5-25, 13-5-28, 13-5-34, 25-7-61 AND 33-1-5,
13 MISSISSIPPI CODE OF 1972, REGARDING SELECTION OF JURORS FOR
14 PURPOSES OF AMENDMENT; TO AMEND SECTION 83-48-5, MISSISSIPPI CODE
15 OF 1972, TO EXPAND THE MEDICAL MALPRACTICE AVAILABILITY PLAN THAT
16 IS ADMINISTERED BY THE TORT CLAIMS BOARD FOR PRIOR ACTS COVERAGE
17 PURPOSES; TO AMEND SECTION 11-46-1, MISSISSIPPI CODE OF 1972, TO
18 REVISE THE DEFINITION OF "EMPLOYEE" FOR PURPOSES OF LIMITED
19 LIABILITY UNDER THE TORT CLAIMS BOARD TO INCLUDE THOSE PHYSICIANS
20 WHO PROVIDE HEALTH CARE SERVICES TO MEDICAID RECIPIENTS, STATE AND
21 SCHOOL EMPLOYEES HEALTH INSURANCE PLAN PARTICIPANTS AND CHILDREN'S
22 HEALTH INSURANCE PROGRAM PARTICIPANTS IF AT LEAST THIRTY-FIVE
23 PERCENT OF THE PHYSICIAN'S PATIENTS ARE MEDICAID RECIPIENTS; TO
24 INCLUDE CERTAIN RETIRED PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID
25 HEALTH CARE SERVICES TO ANY PUBLIC ENTITY OR PRIVATE ENTITY; TO
26 CREATE IN THE STATE TREASURY A SPECIAL FUND TO THE CREDIT OF THE
27 MISSISSIPPI TORT CLAIMS BOARD WHICH SHALL BE COMPRISED OF ANY
28 FUNDS MADE AVAILABLE FOR THE FUND BY THE LEGISLATURE; TO PROVIDE
29 THAT MONIES IN THE SPECIAL FUND SHALL BE EXPENDED BY THE
30 MISSISSIPPI TORT CLAIMS BOARD TO PROVIDE ADDITIONAL FUNDS FOR
31 PRIOR ACT COVERAGE FOR PLAN PARTICIPANTS AND TO PAY THE MEDICAL
32 MALPRACTICE PREMIUMS FOR THOSE RETIRED PHYSICIANS DESCRIBED
33 HEREIN; TO CREATE AN ADVISORY COUNCIL TO ASSIST THE MISSISSIPPI
34 TORT CLAIMS BOARD IN DETERMINING WHETHER A PHYSICIAN MEETS THE
35 PERCENTAGE REQUIREMENT NECESSARY TO QUALIFY AS AN EMPLOYEE FOR
36 LIMITED LIABILITY PURPOSES; TO PROVIDE RATES FOR COPIES OF MEDICAL
37 RECORDS THAT MAY BE CHARGED BY MEDICAL PROVIDERS AND FACILITIES;
38 TO AMEND SECTION 73-25-27, MISSISSIPPI CODE OF 1972, TO PROVIDE
39 THE RIGHT FOR HARMED PATIENTS TO ATTEND DISCIPLINARY PROCEEDINGS
40 INVOLVING THE PHYSICIAN RESPONSIBLE FOR THE HARM; TO PROVIDE FOR A
41 WAIVER OF THE MEDICAL PRIVILEGE IN CERTAIN CASES; TO REQUIRE
42 STATEWIDE PUBLICATION OF RECALL NOTICES; TO ALLOW BENCH TRIALS IN
43 CERTAIN CASES IF THE PARTIES AGREE; TO PROVIDE THAT ALL
44 MALPRACTICE CLAIMS SHALL BE REVIEWED BY A MEDICAL REVIEW PANEL; TO
45 ALLOW PARTIES TO MUTUALLY AGREE TO OPT OUT OF THIS REQUIREMENT; TO
46 ESTABLISH THE MEMBERSHIP OF THE REVIEW PANEL; TO PROVIDE WHAT
47 EVIDENCE MAY BE CONSIDERED BY THE PANEL; TO PROVIDE THE FORM OF
48 THE DECISION; TO PROVIDE FOR PANELIST IMMUNITY AND COMPENSATION;
49 TO AMEND SECTION 11-46-19, MISSISSIPPI CODE OF 1972, IN CONFORMITY
50 THERE TO; TO REQUIRE A ROLL BACK OF INSURANCE PREMIUM RATES; AND
51 FOR RELATED PURPOSES.

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

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

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

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

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

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

73 (3) (a) If a court of this state, on written motion of a
74 party, finds that in the interest of justice and for the
75 convenience of the parties and witnesses a claim or action would
76 be more properly heard in a forum outside this state or in a
77 different county of proper venue within this state, the court
78 shall decline to adjudicate the matter under the doctrine of forum
79 non conveniens. As to a claim or action that would be more
80 properly heard in a forum outside this state, the court shall
81 dismiss the claim or action. As to a claim or action that would
82 be more properly heard in a different county of proper venue
83 within this state, the venue shall be transferred to the
84 appropriate county. In determining whether to grant a motion to

85 dismiss an action or to transfer venue under the doctrine of forum
86 non conveniens, the court shall give consideration to the
87 following factors:

88 (i) Relative ease of access to sources of proof;

89 (ii) Availability and cost of compulsory process
90 for attendance of unwilling witnesses;

91 (iii) Possibility of viewing of the premises, if
92 viewing would be appropriate to the action;

93 (iv) Unnecessary expense or trouble to the
94 defendant not necessary to the plaintiff's own right to pursue his
95 remedy;

96 (v) Administrative difficulties for the forum
97 courts;

98 (vi) Existence of local interests in deciding the
99 case at home; and

100 (vii) The traditional deference given to a
101 plaintiff's choice of forum.

102 (b) A court may not dismiss a claim under this
103 subsection until the defendant files with the court or with the
104 clerk of the court a written stipulation that, with respect to a
105 new action on the claim commenced by the plaintiff, all the
106 defendants waive the right to assert a statute of limitations
107 defense in all other states of the United States in which the
108 claim was not barred by limitations at the time the claim was
109 filed in this state as necessary to effect a tolling of the
110 limitations periods in those states beginning on the date the
111 claim was filed in this state and ending on the date the claim is
112 dismissed.

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

115 11-1-60. (1) For the purposes of this section, the
116 following words and phrases shall have the meanings ascribed
117 herein unless the context clearly requires otherwise:

118 (a) "Noneconomic damages" means subjective,
119 nonpecuniary damages arising from death, pain, suffering,
120 inconvenience, mental anguish, worry, emotional distress, loss of
121 society and companionship, loss of consortium, bystander injury,
122 physical impairment, disfigurement, injury to reputation,
123 humiliation, embarrassment, loss of the enjoyment of life, hedonic
124 damages, other nonpecuniary damages, and any other theory of
125 damages such as fear of loss, illness or injury. The term
126 "noneconomic damages" shall not include * * * punitive or
127 exemplary damages.

128 (b) "Actual economic damages" means objectively
129 verifiable pecuniary damages arising from medical expenses and
130 medical care, rehabilitation services, custodial care,
131 disabilities, loss of earnings and earning capacity, loss of
132 income, burial costs, loss of use of property, costs of repair or
133 replacement of property, costs of obtaining substitute domestic
134 services, loss of employment, loss of business or employment
135 opportunities, and other objectively verifiable monetary losses.

136 * * *

137 (2) (a) In any cause of action filed on or after July 1,
138 2004, for injury based on malpractice or breach of standard of
139 care against a provider of health care, including institutions for
140 the aged or infirm, in the event the trier of fact finds the
141 defendant liable, they shall not award the plaintiff more than
142 Five Hundred Thousand Dollars (\$500,000.00) for noneconomic
143 damages.

144 (b) In any civil action filed on or after January 1,
145 2005, other than those actions described in paragraph (a) of this
146 subsection, in the event the trier of fact finds the defendant
147 liable, they shall not award the plaintiff more than One Million
148 Dollars (\$1,000,000.00) for noneconomic damages. Every five (5)
149 years from the effective date of this act, the limitation herein

150 shall be raised or adjusted by the percent per annum cumulative
151 since the effective date of this act.

152 * * *

153 It is the intent of this section to limit all noneconomic
154 damages to the above.

155 (c) The trier of fact shall not be advised of the
156 limitations imposed by this subsection (2) and the judge shall
157 appropriately reduce any award of noneconomic damages that exceeds
158 the applicable limitation.

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

162 (4) Nothing in this section shall be construed to impose a
163 limitation on damages for blindness, third degree burns, loss of
164 reproductive capabilities or actual economic damages.

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

169 **SECTION 3.** Section 11-1-63, Mississippi Code of 1972, is
170 amended as follows:

171 11-1-63. Subject to the provisions of Section 11-1-64, in
172 any action for damages caused by a product except for commercial
173 damage to the product itself:

174 (a) The manufacturer or seller of the product shall not
175 be liable if the claimant does not prove by the preponderance of
176 the evidence that at the time the product left the control of the
177 manufacturer or seller:

178 (i) 1. The product was defective because it
179 deviated in a material way from the manufacturer's specifications
180 or from otherwise identical units manufactured to the same
181 manufacturing specifications, or

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

184 3. The product was designed in a defective
185 manner, or

186 4. The product breached an express warranty
187 or failed to conform to other express factual representations upon
188 which the claimant justifiably relied in electing to use the
189 product; and

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

192 (iii) The defective and unreasonably dangerous
193 condition of the product proximately caused the damages for which
194 recovery is sought.

195 (b) A product is not defective in design or formulation
196 if the harm for which the claimant seeks to recover compensatory
197 damages was caused by an inherent characteristic of the product
198 which is a generic aspect of the product that cannot be eliminated
199 without substantially compromising the product's usefulness or
200 desirability and which is recognized by the ordinary person with
201 the ordinary knowledge common to the community.

202 (c) (i) In any action alleging that a product is
203 defective because it failed to contain adequate warnings or
204 instructions pursuant to paragraph (a)(i)2 of this section, the
205 manufacturer or seller shall not be liable if the claimant does
206 not prove by the preponderance of the evidence that at the time
207 the product left the control of the manufacturer or seller, the
208 manufacturer or seller knew or in light of reasonably available
209 knowledge should have known about the danger that caused the
210 damage for which recovery is sought and that the ordinary user or
211 consumer would not realize its dangerous condition.

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

215 that communicates sufficient information on the dangers and safe
216 use of the product, taking into account the characteristics of,
217 and the ordinary knowledge common to an ordinary consumer who
218 purchases the product; or in the case of a prescription drug,
219 medical device or other product that is intended to be used only
220 under the supervision of a physician or other licensed
221 professional person, taking into account the characteristics of,
222 and the ordinary knowledge common to, a physician or other
223 licensed professional who prescribes the drug, device or other
224 product.

225 (d) In any action alleging that a product is defective
226 pursuant to paragraph (a) of this section, the manufacturer or
227 seller shall not be liable if the claimant (i) had knowledge of a
228 condition of the product that was inconsistent with his safety;
229 (ii) appreciated the danger in the condition; and (iii)
230 deliberately and voluntarily chose to expose himself to the danger
231 in such a manner to register assent on the continuance of the
232 dangerous condition.

233 (e) In any action alleging that a product is defective
234 pursuant to paragraph (a)(i)2 of this section, the manufacturer or
235 seller shall not be liable if the danger posed by the product is
236 known or is open and obvious to the user or consumer of the
237 product, or should have been known or open and obvious to the user
238 or consumer of the product, taking into account the
239 characteristics of, and the ordinary knowledge common to, the
240 persons who ordinarily use or consume the product.

241 (f) In any action alleging that a product is defective
242 because of its design pursuant to paragraph (a)(i)3 of this
243 section, the manufacturer or product seller shall not be liable if
244 the claimant does not prove by the preponderance of the evidence
245 that at the time the product left the control of the manufacturer
246 or seller:

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

251 (ii) The product failed to function as expected
252 and there existed a feasible design alternative that would have to
253 a reasonable probability prevented the harm. A feasible design
254 alternative is a design that would have to a reasonable
255 probability prevented the harm without impairing the utility,
256 usefulness, practicality or desirability of the product to users
257 or consumers.

258 (g) (i) The manufacturer of a product who is found
259 liable for a defective product pursuant to paragraph (a) shall
260 indemnify a product seller for the costs of litigation, any
261 reasonable expenses, reasonable attorney's fees and any damages
262 awarded by the trier of fact unless the seller exercised
263 substantial control over that aspect of the design, testing,
264 manufacture, packaging or labeling of the product that caused the
265 harm for which recovery of damages is sought; the seller altered
266 or modified the product, and the alteration or modification was a
267 substantial factor in causing the harm for which recovery of
268 damages is sought; the seller had actual knowledge of the
269 defective condition of the product at the time he supplied same;
270 or the seller made an express factual representation about the
271 aspect of the product which caused the harm for which recovery of
272 damages is sought.

273 (ii) Subparagraph (i) shall not apply unless the
274 seller has given prompt notice of the suit to the manufacturer
275 within ninety (90) days of the service of the complaint against
276 the seller.

277 (h) In any action alleging that a product is defective
278 pursuant to paragraph (a) of this section, the seller of a product
279 other than the manufacturer shall not be liable unless the seller

280 exercised substantial control over that aspect of the design,
281 testing, manufacture, packaging or labeling of the product that
282 caused the harm for which recovery of damages is sought; or the
283 seller altered or modified the product, and the alteration or
284 modification was a substantial factor in causing the harm for
285 which recovery of damages is sought; or the seller had actual or
286 constructive knowledge of the defective condition of the product
287 at the time he supplied the product. It is the intent of this
288 section to insulate innocent sellers who are not actively
289 negligent, but instead are mere conduits of a product.

290 (i) Nothing in this section shall be construed to
291 eliminate any common law defense to an action for damages caused
292 by a product.

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

295 11-1-64. (1) A defendant whose liability is based solely on
296 his status as a seller in the stream of commerce may be dismissed
297 from a products liability claim as provided in this section.

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

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

310 (4) The parties shall have sixty (60) days in which to
311 conduct discovery on the issues raised in the motion and
312 affidavit. The court for good cause shown, may extend the time

313 for discovery, and may enter a protective order pursuant to the
314 rules of civil procedure regarding the scope of discovery on other
315 issues.

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

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

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

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

332 11-1-65. (1) In any action in which punitive damages are
333 sought:

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

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

343 (c) If, but only if, an award of compensatory damages
344 has been made against a party, the court shall promptly commence

345 an evidentiary hearing * * * to determine whether punitive damages
346 may be considered by the same trier of fact.

347 (d) The court shall determine whether the issue of
348 punitive damages may be submitted to the trier of fact; and, if
349 so, the trier of fact shall determine whether to award punitive
350 damages and in what amount.

351 (e) In all cases involving an award of punitive
352 damages, the fact finder, in determining the amount of punitive
353 damages, shall consider, to the extent relevant, the following:
354 the defendant's financial condition and net worth; the nature and
355 reprehensibility of the defendant's wrongdoing, for example, the
356 impact of the defendant's conduct on the plaintiff, or the
357 relationship of the defendant to the plaintiff; the defendant's
358 awareness of the amount of harm being caused and the defendant's
359 motivation in causing such harm; the duration of the defendant's
360 misconduct and whether the defendant attempted to conceal such
361 misconduct; and any other circumstances shown by the evidence that
362 bear on determining a proper amount of punitive damages. The
363 trier of fact shall be instructed that the primary purpose of
364 punitive damages is to punish the wrongdoer and deter similar
365 misconduct in the future by the defendant and others while the
366 purpose of compensatory damages is to make the plaintiff whole.

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

372 (ii) In determining whether the award is
373 excessive, the court shall take into consideration the following
374 factors:

375 1. Whether there is a reasonable relationship
376 between the punitive damage award and the harm likely to result

377 from the defendant's conduct as well as the harm that actually
378 occurred;

379 2. The degree of reprehensibility of the
380 defendant's conduct, the duration of that conduct, the defendant's
381 awareness, any concealment, and the existence and frequency of
382 similar past conduct;

383 3. The financial condition and net worth of
384 the defendant; and

385 4. In mitigation, the imposition of criminal
386 sanctions on the defendant for its conduct and the existence of
387 other civil awards against the defendant for the same conduct.

388 (2) The seller of a product other than the manufacturer
389 shall not be liable for punitive damages unless the seller
390 exercised substantial control over that aspect of the design,
391 testing, manufacture, packaging or labeling of the product that
392 caused the harm for which recovery of damages is sought; the
393 seller altered or modified the product, and the alteration or
394 modification was a substantial factor in causing the harm for
395 which recovery of damages is sought; the seller had actual
396 knowledge of the defective condition of the product at the time he
397 supplied same * * *.

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

401 (i) Twenty Million Dollars (\$20,000,000.00) for a
402 defendant with a net worth of more than One Billion Dollars
403 (\$1,000,000,000.00);

404 (ii) Fifteen Million Dollars (\$15,000,000.00) for
405 a defendant with a net worth of more than Seven Hundred Fifty
406 Million Dollars (\$750,000,000.00) but not more than One Billion
407 Dollars (\$1,000,000,000.00);

408 (iii) Five Million Dollars (\$5,000,000.00) for a
409 defendant with a net worth of more than Five Hundred Million

410 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty
411 Million Dollars (\$750,000,000.00);

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

416 (v) Two Million Five Hundred Thousand Dollars
417 (\$2,500,000.00) for a defendant with a net worth of more than
418 Fifty Million Dollars (\$50,000,000.00) but not more than One
419 Hundred Million Dollars (\$100,000,000.00); or

420 (vi) Two percent (2%) of the defendant's net worth
421 for a defendant with a net worth of Fifty Million Dollars
422 (\$50,000,000.00) or less.

423 (b) For the purposes of determining the defendant's net
424 worth in paragraph (a), the amount of the net worth shall be
425 determined in accordance with Generally Accepted Accounting
426 Principles.

427 (c) The limitation on the amount of punitive damages
428 imposed by this subsection (3) shall not be disclosed to the trier
429 of fact, but shall be applied by the court to any punitive damages
430 verdict.

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

435 (i) If the defendant was convicted of a felony
436 under the laws of this state or under federal law which caused the
437 damages or injury; or

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

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

444 (4) Nothing in this section shall be construed as creating a
445 right to an award of punitive damages or to limit the duty of the
446 court, or the appellate courts, to scrutinize all punitive damage
447 awards, ensure that all punitive damage awards comply with
448 applicable procedural, evidentiary and constitutional
449 requirements, and to order remittitur where appropriate.

450 * * *

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

453 11-1-66. (1) No owner, occupant, lessee or managing agent
454 of property shall be civilly liable for the criminal acts of a
455 third party, unless such owner, occupant, lessee or managing agent
456 knew or, with the exercise of reasonable care, should have known
457 of the risk of criminal conduct on such property and the failure
458 to exercise reasonable care to deter such foreseeable conduct is a
459 proximate cause of damages to an individual or entity.

460 (2) No owner, occupant, lessee or managing agent of property
461 shall be liable for the death or injury of an independent
462 contractor or the independent contractor's employees resulting
463 from dangers of which the contractor knew or reasonably should
464 have known.

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

467 85-5-7. (1) As used in this section "fault" means an act or
468 omission of a person which is a proximate cause of injury or death
469 to another person or persons, damages to property, tangible or
470 intangible, or economic injury, including, but not limited to,
471 negligence, malpractice, strict liability, absolute liability or
472 failure to warn. "Fault" shall not include any tort which results
473 from an act or omission committed with a specific wrongful intent.

474 * * *

475 (2) Except as otherwise provided in subsection (4) of this
476 section, in any civil action based on fault, the liability for
477 damages caused by two (2) or more persons shall be several only,
478 and not joint and several and a joint tort-feasor shall be liable
479 only for the amount of damages allocated to him in direct
480 proportion to his percentage of fault. In assessing percentages
481 of fault an employer and the employer's employee or a principal
482 and the principal's agent shall be considered as one (1) defendant
483 when the liability of such employer or principal has been caused
484 by the wrongful or negligent act or omission of the employee or
485 agent.

486 * * *

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

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

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

499 * * *

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

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

505 13-5-23. All qualified persons shall be liable to serve as
506 jurors, unless excused by the court for one (1) of the following
507 causes:

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

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

513 (c) When the juror is under an emergency, fairly
514 equivalent to those mentioned in the foregoing clauses (a) and
515 (b).

516 An excuse of illness under clause (a) may be made to the
517 clerk of court outside of open court by providing the clerk with
518 either a certificate of a licensed physician or an affidavit of
519 the juror, stating that the juror is ill or that there is a
520 serious illness in the juror's family. The test of an excuse
521 under clause (b) shall be whether, if the juror were incapacitated
522 by illness or otherwise for a week, some other persons would be
523 available or could reasonably be procured to carry on the business
524 for the week, and the test of an excuse under clause (c) shall be
525 such as to be the fair equivalent, under the circumstances of that
526 prescribed under clause (b). In cases under clauses (b) and (c)
527 the excuse must be made by the juror, in open court, under oath.

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

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

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

539 13-5-25. Every citizen over sixty-five (65) years of age,
540 and everyone who has served on the regular panel as a juror in the
541 actual trial of one or more litigated cases within two (2) years,
542 shall be exempt from service if he claims the privilege; but the
543 latter class shall serve as talesmen, and on special venire, and
544 on the regular panel, if there be a deficiency of jurors. No
545 qualified juror shall be excluded because of any such reasons, but
546 the same shall be a personal privilege to be claimed by any person
547 selected for jury duty. Any citizen over sixty-five (65) years of
548 age may claim this personal privilege outside of open court by
549 providing the clerk of court with information that allows the
550 clerk to determine the validity of the claim.

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

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

557 13-5-28. If a grand, petit or other jury is ordered to be
558 drawn, the clerk thereafter shall cause each person drawn for jury
559 service to be served with a summons, either personally or by mail,
560 addressed to him at his usual residence, business or post office
561 address, requiring him to report for jury service at a specified
562 time and place.

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

565 13-5-34. A person summoned for jury service who fails to
566 appear or to complete jury service as directed shall be ordered by
567 the court to appear forthwith and show cause for his failure to
568 comply with the summons. If he fails to show good cause for
569 noncompliance with the summons he is guilty of criminal contempt

570 and upon conviction may be fined not more than One Hundred Dollars
571 (\$100.00) or imprisoned not more than three (3) days, or both.

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

574 25-7-61. (1) Fees of jurors shall be payable as follows:

575 (a) Grand jurors and petit jurors in the chancery,
576 county, circuit and special eminent domain courts shall be paid an
577 amount to be set by the board of supervisors, not to be less than
578 Twenty-five Dollars (\$25.00) per day and not to be greater than
579 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
580 25-3-41. In the trial of all cases where jurors are in charge of
581 bailiffs and are not permitted to separate, the sheriff with the
582 approval of the trial judge may pay for room and board of jurors
583 on panel for actual time of trial.

584 No grand juror shall receive any compensation except mileage
585 unless he shall have been sworn as provided by Section 13-5-45;
586 and no petit juror except those jurors called on special venires
587 shall receive any compensation authorized under this subsection
588 except mileage unless he shall have been sworn as provided by
589 Section 13-5-71.

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

596 (c) Jurors in the justice courts shall be paid an
597 amount of not less than Ten Dollars (\$10.00) per day and not more
598 than Fifteen Dollars (\$15.00) per day, to be established by the
599 board of supervisors. In all criminal cases in the justice court
600 wherein the prosecution fails, the fees of jurors shall be paid by
601 the county treasurer on order of the board of supervisors on

602 certificate of the county attorney in all counties that have
603 county attorneys, otherwise by the justice court judge.

604 (2) Any juror may return the fees provided as compensation
605 for service as a juror to the county which paid for such person's
606 service as a juror. The fees returned to the county may be
607 earmarked for a particular purpose to be selected by the juror,
608 including:

609 (a) The local public library;

610 (b) Local law enforcement;

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

613 (d) Any other governmental agency.

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

616 33-1-5. Any member of the Mississippi National Guard shall
617 be exempt from jury duty upon presenting a current written
618 statement from his superior officer that such jury service will be
619 likely to interfere with his military duties.

620 **SECTION 14.** The Legislature recognizes the importance of
621 assuring adequate health care services for all Mississippians, and
622 it acknowledges that physicians are a vital component of providing
623 such services. The Legislature finds that because of the makeup
624 of the citizenry of the state and the percentage of citizens who
625 are (a) Medicaid recipients, (b) State and School Employees Health
626 Insurance Plan participants and (c) Children's Health Insurance
627 Program participants, physicians who provide health care services
628 to such individuals are providing an essential public service and
629 that it is in the public interest to provide funding to further
630 address medical malpractice insurance needs of these physicians.

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

633 83-48-5. (1) There is created the Medical Malpractice
634 Insurance Availability Plan that shall be funded by the

635 participants in the plan. The plan shall be administered by the
636 Tort Claims Board created under Section 11-46-18.

637 (2) (a) The plan shall provide coverage for medical
638 malpractice to hospitals, institutions for the aged or infirm, or
639 other health care facilities licensed by the State of Mississippi,
640 physicians, nurses or other personnel who are duly licensed to
641 practice in a hospital or other health care facility licensed by
642 the State of Mississippi. Participation in the plan shall be
643 voluntary for any hospital, institution for the aged or infirm, or
644 other health care facilities licensed by the State of Mississippi,
645 physicians, nurses and any other personnel who are duly licensed
646 to practice in a hospital or other health care facility licensed
647 by the State of Mississippi. However, no state entity may
648 participate in the plan. The term "state" as used in this
649 subsection has the meaning ascribed to that term under Section
650 11-46-1. The plan shall make available tail (extended reporting
651 period) coverage for participants of the plan at an additional
652 premium assessment for such coverage. The plan shall make
653 available prior acts extended reporting period coverage
654 (retroactive to the inception date of the physician's last medical
655 malpractice policy) for participants of the plan at an additional
656 premium assessment for such coverage. The board shall encourage
657 participation in the insurance industry market. Any duly licensed
658 qualified Mississippi agent who writes a policy under the plan may
659 receive a commission not to exceed five percent (5%) of the
660 premium assessment as full compensation.

661 (b) The limits of coverage under the plan shall be as
662 follows:

663 (i) For participants who are "political
664 subdivisions" and participants who are "employees" of political
665 subdivisions, as such terms are defined under Section 11-46-1, a
666 maximum of Five Hundred Thousand Dollars (\$500,000.00), per single

667 occurrence, and Two Million Dollars (\$2,000,000.00), in the
668 aggregate, per year, for all occurrences;

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

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

676 (iv) For prior acts extended reporting period
677 coverage, the plan shall provide the same limits of coverage as
678 designated in subparagraphs (i) and (ii) of this paragraph (b).
679 For the purpose of providing funds, in addition to assessments,
680 for prior acts extending reporting period coverage, the
681 Mississippi Tort Claims Board shall use monies in the special fund
682 created under Section 17 of House Bill No. 13, First Extraordinary
683 Session of 2004.

684 (3) Policies may be underwritten based on participant
685 history. All rates applicable to the coverage provided herein
686 shall be on an actuarially sound basis and calculated to be
687 self-supporting. Policies for prior acts extended reporting
688 period coverage shall be underwritten at the lowest premium rates
689 possible on an actuarially sound basis.

690 (4) Every participant in the plan shall:

691 (a) File with the board a written agreement, the form
692 and substance of which shall be determined by the board, signed by
693 a duly authorized representative of the participant, that the
694 participant will provide services to (i) Medicaid recipients, (ii)
695 State and School Employees Health Insurance Plan participants, and
696 (iii) Children's Health Insurance Program participants. The
697 agreement must provide, among other things, that the participant
698 will provide services to Medicaid recipients, State and School
699 Employees Health Insurance Plan participants, and Children's

700 Health Insurance Program participants in a manner that is
701 comparable to the services provided to all other patients and
702 shall be made without balance billing to the patient; and

703 (b) Pay all assessments and premiums established by the
704 board.

705 (5) This chapter shall not preclude any hospital,
706 institution for the aged or infirm, or other health care
707 facilities licensed by the State of Mississippi, physician, nurse
708 or other personnel who are duly licensed to practice in a hospital
709 or other health care facility licensed by the State of Mississippi
710 from procuring medical malpractice insurance from any source other
711 than the plan.

712 (6) Notwithstanding any other provision of this section to
713 the contrary, the Mississippi Tort Claims Board shall use so much
714 of the monies in the special fund created in Section 17 of House
715 Bill No. 13, First Extraordinary Session of 2004, as may be
716 necessary to pay all medical malpractice insurance premiums for
717 not more than an aggregate of twenty-five (25) physicians
718 described in Section 11-46-1(f)(ii).

719 (7) The Tort Claims Board shall have the following powers
720 and duties:

721 (a) To expend money from a loan from the Tort Claims
722 Fund in an amount not to exceed Five Hundred Thousand Dollars
723 (\$500,000.00) for the start-up costs of administering the Medical
724 Malpractice Insurance Availability Plan;

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

726 (c) To charge and collect assessments and fees from
727 participants in the plan;

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

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

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

740 (g) To use monies in the special fund created under
741 Section 17 of House Bill No. 13, First Extraordinary Session of
742 2004, for the purposes provided in subsections (2)(b)(iv) and (6)
743 of this section.

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

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

752 (i) Certification by a qualified actuary that the
753 plan is solvent;

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

755 (iii) The number of claims filed and paid by the
756 plan; and

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

759 (8) Nothing contained in this section shall be construed as
760 repealing, amending or superseding the provisions of any other law
761 and, if the provisions of this section conflict with any other
762 law, then the provisions of such other law shall govern and
763 control to the extent of the conflict.

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

766 11-46-1. As used in this chapter the following terms shall
767 have the meanings herein ascribed unless the context otherwise
768 requires:

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

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

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

775 (d) "Department" means the Department of Finance and
776 Administration.

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

779 (f) "Employee" means:

780 (i) Any officer, employee or servant of the State
781 of Mississippi or a political subdivision of the state, including
782 elected or appointed officials and persons acting on behalf of the
783 state or a political subdivision in any official capacity,
784 temporarily or permanently, in the service of the state or a
785 political subdivision whether with or without compensation. The
786 term "employee" shall not mean a person or other legal entity
787 while acting in the capacity of an independent contractor under
788 contract to the state or a political subdivision; provided,
789 however, that for purposes of the limits of liability provided for
790 in Section 11-46-15, the term "employee" shall include physicians
791 under contract to provide health services with the State Board of
792 Health, the State Board of Mental Health or any county or
793 municipal jail facility while rendering services under such
794 contract. The term "employee" shall also include any physician,
795 dentist or other health care practitioner employed by the
796 University of Mississippi Medical Center (UMMC) and its
797 departmental practice plans who is a faculty member and provides
798 health care services only for patients at UMMC or its affiliated

799 practice sites. The term "employee" shall also include any
800 physician, dentist or other health care practitioner employed by
801 any university under the control of the Board of Trustees of State
802 Institutions of Higher Learning who practices only on the campus
803 of any university under the control of the Board of Trustees of
804 State Institutions of Higher Learning. The term "employee" shall
805 also include any physician, dentist or other health care
806 practitioner employed by the State Veterans Affairs Board and who
807 provides health care services for patients for the State Veterans
808 Affairs Board. The term "employee" shall also include Mississippi
809 Department of Human Services licensed foster parents for the
810 limited purposes of coverage under the Tort Claims Act as provided
811 in Section 11-46-8. For the purposes of the limits of liability
812 provided for in Section 11-46-15 and for no other purpose under
813 this chapter, the term "employee" also shall include any physician
814 who provides health care services to Medicaid recipients, State
815 and School Employees Health Insurance Plan participants and
816 Children's Health Insurance Program participants, provided that at
817 least thirty-five percent (35%) of the physician's patients, as
818 determined by the board, are Medicaid recipients; and
819 (ii) Any retired physician who provides volunteer
820 unpaid health care services to any public entity or private
821 entity. For the purposes of this subparagraph (ii), "public
822 entity" means any agency, department, institution, instrumentality
823 or political subdivision of the state, or any agency, department,
824 institution or instrumentality of any political subdivision of the
825 state; and "private entity" means any business, organization,
826 corporation, association or other legal entity which is not a
827 public entity.
828 (g) "Governmental entity" means and includes the state
829 and political subdivisions as herein defined.

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

833 (i) "Political subdivision" means any body politic or
834 body corporate other than the state responsible for governmental
835 activities only in geographic areas smaller than that of the
836 state, including, but not limited to, any county, municipality,
837 school district, community hospital as defined in Section
838 41-13-10, Mississippi Code of 1972, airport authority or other
839 instrumentality thereof, whether or not such body or
840 instrumentality thereof has the authority to levy taxes or to sue
841 or be sued in its own name.

842 (j) "State" means the State of Mississippi and any
843 office, department, agency, division, bureau, commission, board,
844 institution, hospital, college, university, airport authority or
845 other instrumentality thereof, whether or not such body or
846 instrumentality thereof has the authority to levy taxes or to sue
847 or be sued in its own name.

848 (k) "Law" means all species of law including, but not
849 limited to, any and all constitutions, statutes, case law, common
850 law, customary law, court order, court rule, court decision, court
851 opinion, court judgment or mandate, administrative rule or
852 regulation, executive order, or principle or rule of equity.

853 **SECTION 17.** There is created in the State Treasury a special
854 fund to the credit of the Mississippi Tort Claims Board, which
855 shall be comprised of any funds that may be made available for the
856 fund by the Legislature. Monies in the fund shall be expended by
857 the Mississippi Tort Claims Board, upon appropriation by the
858 Legislature, only for the purpose of providing additional funds
859 for prior acts extended reporting period coverage as provided in
860 Section 83-48-5 and for paying the medical malpractice premiums
861 for those physicians described in Section 11-46-1(f)(ii) as
862 provided for in Section 83-48-5. Unexpended amounts remaining in

863 the special fund at the end of a fiscal year shall not lapse into
864 the State General Fund, and any interest earned or investment
865 earnings on amounts in the special fund shall be deposited to the
866 credit of the special fund.

867 **SECTION 18.** The Tort Claims Board shall develop methods and
868 promulgate rules and regulations to verify whether a physician
869 meets the percentage requirement under Section 11-46-1(f) to
870 qualify as an employee. There is created an advisory council to
871 assist the Mississippi Tort Claims Board in determining whether a
872 physician meets the percentage requirement under Section
873 11-46-1(f) to qualify as an employee. The advisory council shall
874 be composed of the Executive Director of the Mississippi Medical
875 Association or his designee; the President of the Mississippi
876 Medical and Surgical Association or his designee; the
877 administrator of the Mississippi Tort Claims Board or his
878 designee; two (2) physicians appointed by the Lieutenant Governor;
879 two (2) physicians appointed by the Speaker of the House of
880 Representatives and three (3) nonphysician members, one (1) from
881 each Supreme Court district, appointed by the Governor.

882 **SECTION 19.** (1) Any medical provider or hospital or nursing
883 home or other medical facility shall charge no more than the
884 following amounts to patients or their representatives for
885 photocopying any patient's records: Twenty Dollars (\$20.00) for
886 pages one (1) through twenty (20); One Dollar (\$1.00) per page for
887 the next eighty (80) pages; Fifty Cents (50¢) per page for all
888 pages thereafter. Ten percent (10%) of the total charge may be
889 added for postage and handling. Fifteen Dollars (\$15.00) may be
890 recovered by the medical provider or hospital or nursing home or
891 other medical facility for retrieving medical records in archives
892 at a location off the premises where the facility/office is
893 located.

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

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

899 73-25-27. The Mississippi State Board of Medical Licensure
900 after notice and opportunity for a hearing to the licentiate, is
901 authorized to suspend or revoke for any cause named herein any
902 license it has issued, or the renewal thereof, that authorizes any
903 person to practice medicine, osteopathy, or any other method of
904 preventing, diagnosing, relieving, caring for, or treating, or
905 curing disease, injury or other bodily condition. The procedure
906 for suspension of a license for being out of compliance with an
907 order for support, and the procedure for the reissuance or
908 reinstatement of a license suspended for that purpose, and the
909 payment of any fees for the reissuance or reinstatement of a
910 license suspended for that purpose, shall be governed by Section
911 93-11-157 or 93-11-163, as the case may be. If there is any
912 conflict between any provision of Section 93-11-157 or 93-11-163
913 and any provision of this chapter, the provisions of Section
914 93-11-157 or 93-11-163, as the case may be, shall control.

915 Such notice shall be effected by registered mail or personal
916 service setting forth the particular reasons for the proposed
917 action and fixing a date not less than thirty (30) days or more
918 than sixty (60) days from the date of such mailing or such
919 service, at which time the licentiate shall be given an
920 opportunity for a prompt and fair hearing. For the purpose of
921 such hearing the board, acting by and through its executive
922 office, may subpoena persons and papers on its own behalf and on
923 behalf of licentiate, including records obtained pursuant to
924 Section 73-25-28, may administer oaths and such testimony when
925 properly transcribed, together with such papers and exhibits,
926 shall be admissible in evidence for or against the licentiate. At

927 such hearing licentiate may appear by counsel and personally in
928 his own behalf. Any person sworn and examined as a witness in
929 such hearing shall not be held to answer criminally, nor shall any
930 papers or documents produced by such witness be competent evidence
931 in any criminal proceedings against such witness other than for
932 perjury in delivering his evidence. Any patient or a
933 representative of the patient who has suffered harm by a physician
934 subject to a hearing under this section shall have the right to
935 attend any crucial proceedings conducted by the Board of Medical
936 Licensure for disciplinary purposes regarding such physician as to
937 that patient's treatment. Notice shall be provided to the patient
938 or his representative at the same time and in the same manner as
939 the notice is made to the physician. On the basis of any such
940 hearing, or upon default of the licentiate, the Board of Medical
941 Licensure shall make a determination specifying its findings of
942 fact and conclusions of law.

943 A copy of such determination shall be sent by registered mail
944 or served personally upon the licentiate. The decision of the
945 Board of Medical Licensure revoking or suspending the license
946 shall become final thirty (30) days after so mailed or served
947 unless within said period the licentiate appeals the decision to
948 the chancery court, pursuant to the provisions hereof, and the
949 proceedings in chancery shall be conducted as other matters coming
950 before the court. All proceedings and evidence, together with
951 exhibits, presented at such hearing before the Board of Medical
952 Licensure in the event of appeal shall be admissible in evidence
953 in said court.

954 The Board of Medical Licensure may subpoena persons and
955 papers on its own behalf and on behalf of the respondent,
956 including records obtained pursuant to Section 73-25-28, may
957 administer oaths, and may compel the testimony of witnesses. It
958 may issue commissions to take testimony, and testimony so taken
959 and sworn to shall be admissible in evidence for and against the

960 respondent. The Board of Medical Licensure shall be entitled to
961 the assistance of the chancery court or the chancellor in
962 vacation, which, on petition by the board, shall issue ancillary
963 subpoenas and petitions and may punish as for contempt of court in
964 the event of noncompliance therewith.

965 Unless the court otherwise decrees, a license that has been
966 suspended by the Board of Medical Licensure for a stated period of
967 time shall automatically become valid on the expiration of that
968 period and a license that has been suspended for an indefinite
969 period shall become again valid if and when the Board of Medical
970 Licensure so orders, which it may do on its own motion or on the
971 petition of the respondent. A license that has been revoked shall
972 not be restored to validity except: (1) after a rehearing by the
973 Board of Medical Licensure, on petition of the respondent, for
974 good cause shown, filed within ten (10) days, immediately
975 following the service on him of the order or judgment of the Board
976 of Medical Licensure revoking his license or (2) by order of the
977 court, on petition as aforesaid. Any licentiate whose license
978 becomes again valid after a period of suspension or after it has
979 been restored to validity after a rehearing or by an order of the
980 court, shall record it again in the office of the clerk of the
981 circuit court of the county in which he resides in conformity with
982 the requirements of Section 73-25-13. Nothing in this chapter
983 shall be construed as limiting or revoking the authority of any
984 court or of any licensing or registering officer or board, other
985 than the State Board of Medical Licensure, to suspend, revoke and
986 reinstate licenses and to cancel registrations under the
987 provisions of Section 41-29-311.

988 **SECTION 21.** In any medical malpractice action with multiple
989 defendants, the medical privilege shall be considered waived by
990 and between all defendants.

991 **SECTION 22.** Any product sold or distributed in Mississippi
992 by any manufacturer licensed to do business or doing business in

993 Mississippi shall publish statewide notice of any recall of any
994 product or its component parts within thirty (30) days of the
995 recall. Any manufacturer who fails to provide notice of a recall
996 as required by this section shall, upon conviction, be fined Fifty
997 Thousand Dollars (\$50,000.00) for each violation. The Attorney
998 General shall enforce compliance with the provisions of this
999 section.

1000 **SECTION 23.** If the parties to a cause of action agree, any
1001 claim filed alleging damages may receive a bench trial which shall
1002 be conducted in two hundred seventy (270) days or less after the
1003 cause of action has been filed. The cause of action shall be a
1004 priority item in the court.

1005 **SECTION 24. Medical review panel.**

1006 (1) **Claims; statute of limitations.**

1007 (a) **Definitions.** For purposes of this section:

1008 (i) "Board" means the Tort Claims Board
1009 established by Section 11-46-18, Mississippi Code of 1972.

1010 (ii) "Health care provider" means a person,
1011 partnership, limited liability partnership, limited liability
1012 company, corporation, facility, or institution licensed by this
1013 state to provide health care or professional services as a
1014 physician, hospital, institution for the aged or infirm, community
1015 blood center, tissue bank, dentist, registered or licensed
1016 practical nurse or certified nurse assistant, ambulance service,
1017 certified registered nurse anesthetist, nurse-midwife, licensed
1018 midwife, pharmacist, optometrist, podiatrist, chiropractor,
1019 physical therapist, occupational therapist, psychologist, social
1020 worker, licensed professional counselor, or any nonprofit facility
1021 considered tax-exempt under Section 501(c)(3), Internal Revenue
1022 Code, pursuant to 26 USC 501(c)(3), for the diagnosis and
1023 treatment of cancer or cancer-related diseases, whether or not
1024 such a facility is required to be licensed by this state, or any
1025 professional corporation a health care provider is authorized to

1026 form under the Mississippi Code of 1972, or any partnership,
1027 limited liability partnership, limited liability company, or
1028 corporation whose business is conducted principally by health care
1029 providers, or an officer, employee, partner, member, shareholder,
1030 or agent thereof acting in the course and scope of his employment.

1031 (iii) "Malpractice" means any unintentional tort
1032 or any breach of contract based on health care or professional
1033 services rendered, or which should have been rendered, by a health
1034 care provider, to a patient, including failure to render services
1035 timely and the handling of a patient, including loading and
1036 unloading of a patient, and also includes all legal responsibility
1037 of a health care provider arising from acts or omissions in the
1038 training or supervision of health care providers, or from defects
1039 in blood, tissue, transplants, drugs and medicines, or from
1040 defects in or failures of prosthetic devices, implanted in or used
1041 on or in the person of a patient.

1042 (b) (i) All malpractice claims against health care
1043 providers, other than claims validly agreed for submission to a
1044 lawfully binding arbitration procedure, shall be reviewed by a
1045 medical review panel as provided in this section unless all
1046 parties specifically waive the use of the medical review panel.

1047 (ii) An action against a health care provider or
1048 his insurer commenced in any court shall be presented to a medical
1049 review panel and an opinion rendered by the panel pursuant to this
1050 section, and the court's request for review shall constitute a
1051 stay pending the panel's decision.

1052 (iii) The request for review of a malpractice
1053 claim under this section shall be made by the court on its own
1054 motion or on the motion of any party.

1055 (c) (i) The request for review must be in writing,
1056 delivered to the board in person or by certified or registered
1057 United States mail, and include as an exhibit the complaint filed.

1058 (ii) Each defendant shall file a written answer
1059 within thirty (30) days of service of the request. If the
1060 defendant fails to file an answer as required, the board shall
1061 notify the defendant of the obligation to file and penalty for
1062 failure to file; notice shall be by certified or registered United
1063 States mail. If the defendant has not filed within thirty (30)
1064 days of the receipt of the notice specified in this subparagraph
1065 (ii), the request for review shall be dismissed; the panel, if
1066 formed, shall be dissolved, and the plaintiff shall be allowed to
1067 proceed in court upon the complaint filed.

1068 (2) **Dismissal of review; dissolution of panel.**

1069 (a) During the pendency of proceedings under this
1070 section, a health care provider against whom a claim has been
1071 filed may raise any exception or defenses available pursuant to
1072 Mississippi law, whether a procedural, statute of limitations or
1073 other exception or defense, at any time without need for
1074 completion of the review process by the medical review panel.

1075 (b) If the court finds for the party raising the
1076 exception or defense, that party shall be dismissed. If there are
1077 no defendants remaining, the panel, if established, shall be
1078 dissolved.

1079 (3) **Composition and selection of panel.**

1080 (a) The medical review panel shall consist of two (2)
1081 physicians who each hold an unlimited license to practice medicine
1082 in Mississippi, one (1) patient advocate appointed by the Tort
1083 Claims Board and one (1) attorney who shall be the nonvoting chair
1084 of the panel. The parties may agree on the attorney member of the
1085 medical review panel within thirty (30) days after the filing of
1086 the answer; if no agreement can be reached, then the attorney
1087 member of the medical review panel shall be selected as follows:

1088 (i) The board shall draw five (5) names at random
1089 from the list of attorneys maintained by the board who have
1090 medical malpractice experience. The names of judges, magistrates,

1091 district attorneys and assistant district attorneys shall be
1092 excluded if drawn and new names drawn in their place. After
1093 selection of the attorney names, the board shall notify the
1094 parties of the attorney names from which the parties, within five
1095 (5) days, may choose the attorney member of the panel. If no
1096 agreement can be reached within five (5) days, the parties shall
1097 immediately initiate a procedure of selecting the attorney by each
1098 striking two (2) names alternately, with the plaintiff striking
1099 first and so advising the defendant of the name of the attorney so
1100 stricken; thereafter, the defendant and the plaintiff shall
1101 alternately strike until both sides have stricken two (2) names
1102 and the remaining name shall be the attorney member of the panel.
1103 If either the plaintiff or defendant fails to strike, the board
1104 shall strike for that party within five (5) additional days.

1105 (ii) After the striking, the board shall notify
1106 the attorney and all parties of the name of the selected attorney.
1107 An attorney who has a conflict of interest shall decline to serve.

1108 (b) The attorney shall act as chairman of the panel and
1109 shall have no vote. The chairman shall preside at panel meetings,
1110 advise the panel as to questions of law, and shall prepare the
1111 opinion of the panel as required in subsection (7) of this
1112 section. It is the duty of the chairman to expedite the selection
1113 of the other panel members, to convene the panel and expedite the
1114 panel's review of the proposed complaint. The attorney chairman
1115 shall establish, by order, a reasonable schedule for submission of
1116 evidence to the medical review panel, but must allow sufficient
1117 time for the parties to make full and adequate presentation of
1118 related facts and authorities within one hundred twenty (120) days
1119 following selection of the panel.

1120 (c) The qualification and selection of physician
1121 members of the medical review panel shall be as follows:

1122 (i) All physicians who hold a license to practice
1123 medicine in the State of Mississippi and who are engaged in the

1124 active practice of medicine in this state, whether in the teaching
1125 profession or otherwise, shall be available for selection and,
1126 unless excused for cause, required to serve upon selection.

1127 (ii) Each party to the action shall have the right
1128 to select one (1) physician and upon selection the physician shall
1129 be required to serve.

1130 (iii) When there are multiple plaintiffs or
1131 defendants, there shall be only one (1) physician selected per
1132 side. The plaintiff, whether single or multiple, shall have the
1133 right to select one (1) physician, and the defendant, whether
1134 single or multiple, shall have the right to select one (1)
1135 physician.

1136 (iv) If any defendant is a physician, the
1137 physicians selected must be of the same specialty as at least one
1138 (1) physician defendant.

1139 (v) Parties and their attorneys are absolutely
1140 prohibited from contact with the physician whose name is
1141 submitted, either before or after submission. No physician may be
1142 informed of the method of any panel member's selection.

1143 (vi) No physician may be selected to serve on more
1144 than four (4) medical review panels in a twelve-month period.

1145 (vii) The physician selection process shall be
1146 completed within thirty (30) days of the selection of the attorney
1147 chairman.

1148 (d) Attorneys and physicians with any financial,
1149 employment, or personal or family ties to any party or attorney
1150 for a party shall not serve on a panel. Any conflict that cannot
1151 be resolved shall be decided by the court upon the motion of any
1152 party.

1153 (4) **Evidence.**

1154 (a) The evidence to be considered by the medical review
1155 panel shall be promptly submitted by the respective parties in
1156 written form only.

1157 (b) The evidence may consist of:

1158 (i) Medical records;

1159 (ii) Sworn statements;

1160 (iii) Expert reports signed by experts;

1161 (iv) Deposition transcripts;

1162 (v) Any other evidence allowed by the medical

1163 review panel or submitted by the parties.

1164 (c) Depositions of the parties only may be taken, and

1165 may be taken prior to the convening of the panel.

1166 (d) Upon request of any party or panel member, the

1167 board shall issue subpoenas and subpoenas duces tecum in aid of

1168 the taking of depositions and the production of documentary

1169 evidence for inspection, copying or both.

1170 (e) The plaintiff must sign a valid authorization

1171 allowing defendants to obtain the plaintiff's medical records.

1172 The defendant shall treat all medical records in a confidential

1173 manner and shall not disclose the contents of the records to

1174 anyone other than the panel or other experts; all other experts

1175 must treat the plaintiff's records as confidential.

1176 (f) The board shall send a copy of the evidence to each

1177 member of the panel.

1178 (5) **Hearings.** (a) After submission of all evidence and

1179 upon ten (10) days' notice to the other side, either party or the

1180 panel shall have the right to convene the panel at a time and

1181 place agreeable to the members of the panel; each party is

1182 entitled to request only one (1) hearing. The panel may hold as

1183 many hearings as it chooses. The purpose of a hearing is to ask

1184 questions as to additional evidence needed and to afford an

1185 opportunity to make oral presentation of the facts. The chairman

1186 of the panel shall preside at all hearings, which shall be

1187 informal.

1188 (b) The following are locations where hearings may be

1189 held:

1190 (i) At a courthouse or other available public
1191 building in the county where the act or omission is alleged to
1192 have occurred.

1193 (ii) The attorney chairman shall decide the
1194 location in the event of any dispute.

1195 (iii) Private offices in the county where the act
1196 or omission is alleged to have occurred may be used if there is no
1197 cost or if the parties pay for the cost.

1198 (6) **Panel deliberations and decision.** After receiving all
1199 evidence from the parties, the panel shall convene to discuss the
1200 evidence presented not less than one (1) time, and, not later than
1201 sixty (60) days after receiving all evidence from the parties,
1202 shall render a written decision signed by the panelists, together
1203 with written reasons for their conclusions, as follows:

1204 (a) There was a breach of the appropriate standard of
1205 care;

1206 (b) There was not a breach of the appropriate standard
1207 of care; or

1208 (c) Whether the defendant or defendants failed to
1209 comply with the appropriate standard of care cannot be determined.

1210 (7) **Form of decision.** The decision reached by the medical
1211 review panel shall be in writing, shall state the facts upon which
1212 it is based, shall be of public record, and shall be admissible as
1213 evidence in the civil case filed.

1214 (8) **Panelist immunity.** A panelist shall have absolute
1215 immunity from civil liability for all communications, findings,
1216 opinions and conclusions made in the course and scope of duties
1217 prescribed by this section.

1218 (9) **Panelist compensation.**

1219 (a) (i) Each physician member of the medical review
1220 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for
1221 all work performed as a member of the panel, and in addition
1222 thereto, per diem as provided in Section 25-3-69, Mississippi Code

1223 of 1972, and travel expenses as would be calculated for a state
1224 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1225 (ii) The attorney chairman of the medical review
1226 panel shall be paid at the rate of One Hundred Fifty Dollars
1227 (\$150.00) per hour, not to exceed a total of Three Thousand
1228 Dollars (\$3,000.00), for all work performed as a member of the
1229 panel, and in addition thereto, per diem as provided in Section
1230 25-3-69, Mississippi Code of 1972, and travel expenses as would be
1231 calculated for a state employee pursuant to Section 25-3-41,
1232 Mississippi Code of 1972.

1233 (b) The costs of the medical review panel shall be
1234 split between the parties. The panel members shall by affidavit
1235 request the payment due under this subsection (9) from the board,
1236 which in turn shall bill the parties for the proportionate share
1237 of each party.

1238 (10) **Delivery and effect of decision.** The chairman shall
1239 submit a copy of the panel's report to the board and all parties
1240 and attorneys by registered or certified mail within five (5) days
1241 after the panel renders its opinion. The panel's report shall be
1242 of public record.

1243 **SECTION 25.** Section 11-46-19, Mississippi Code of 1972, is
1244 amended as follows:

1245 **[Until July 1, 2005, this section shall read as follows:]**

1246 11-46-19. (1) The board shall have the following powers:

1247 (a) To provide oversight over the Tort Claims Fund;

1248 (b) To approve any award made from the Tort Claims
1249 Fund;

1250 (c) To pay all necessary expenses attributable to the
1251 operation of the Tort Claims Fund from such fund;

1252 (d) To assign litigated claims against governmental
1253 entities other than political subdivisions to competent attorneys
1254 unless such governmental entity has a staff attorney who is
1255 competent to represent the governmental entity and is approved by

1256 the board; the board shall give primary consideration to attorneys
1257 practicing in the jurisdiction where the claim arose in assigning
1258 cases; attorneys hired to represent a governmental entity other
1259 than a political subdivision shall be paid according to the
1260 department fee schedule;

1261 (e) To approve all claimants' attorney fees in claims
1262 against the state;

1263 (f) To employ on a full-time basis a staff attorney who
1264 shall possess the minimum qualifications required to be a member
1265 of The Mississippi Bar, and such other staff as it may deem
1266 necessary to carry out the purposes of this chapter; the employees
1267 in the positions approved by the board shall be hired by the
1268 director, shall be employees of the department, and shall be
1269 compensated from the Tort Claims Fund;

1270 (g) To contract with one or more reputable insurance
1271 consulting firms as may be necessary;

1272 (h) To purchase any policies of liability insurance and
1273 to administer any plan of self-insurance or policies of liability
1274 insurance required for the protection of the state against claims
1275 and suits brought under this chapter;

1276 (i) To expend money from the Tort Claims Fund for the
1277 purchase of any policies of liability insurance and the payment of
1278 any award or settlement of a claim against the state under the
1279 provisions of this chapter or of a claim against any school
1280 district, junior college or community college district, or state
1281 agency, arising from the operation of school buses or other
1282 vehicles, under the provisions of Section 37-41-42;

1283 (j) To cancel, modify or replace any policy or policies
1284 of liability insurance procured by the board;

1285 (k) To issue certificates of coverage to governmental
1286 entities, including any political subdivision participating in any
1287 plan of liability protection approved by the board;

1288 (1) To review and approve or reject any plan of
1289 liability insurance or self-insurance reserves proposed or
1290 provided by political subdivisions if such plan is intended to
1291 serve as security for risks of claims and suits against them for
1292 which immunity has been waived under this chapter;

1293 (m) To administer disposition of claims against the
1294 Tort Claims Fund;

1295 (n) To withhold issuance of any warrants payable from
1296 funds of a participating state entity should such entity fail to
1297 make required contributions to the Tort Claims Fund in the time
1298 and manner prescribed by the board;

1299 (o) To develop a comprehensive statewide list of
1300 attorneys who are qualified to represent the state and any
1301 employee thereof named as a defendant in a claim brought under
1302 this chapter against the state or such employee;

1303 (p) To develop a schedule of fees for paying attorneys
1304 defending claims against the state or an employee thereof;

1305 (q) To adopt and promulgate such reasonable rules and
1306 regulations and to do and perform all such acts as are necessary
1307 to carry out its powers and duties under this chapter;

1308 (r) To establish and assess premiums to be paid by
1309 governmental entities required to participate in the Tort Claims
1310 Fund;

1311 (s) To contract with a third-party administrator to
1312 process claims against the state under this chapter;

1313 (t) To annually submit its budget request to the
1314 Legislature as a state agency;

1315 (u) To dispose of salvage obtained in settlement or
1316 payment of any claim at fair market value by such means and upon
1317 such terms as the board may think best; * * *

1318 (v) To administer the Medical Malpractice Insurance
1319 Availability Plan under Section 83-48-5; and

1320 (w) To act as the board as required under House Bill
1321 No. 13, 2004 First Extraordinary Session, dealing with medical
1322 malpractice claims as follows:
1323 (i) To accept filings under the act;
1324 (ii) To coordinate the selection of panels;
1325 (iii) To maintain lists of attorneys eligible for
1326 appointment as attorney chairmen;
1327 (iv) To promulgate rules in reference to the
1328 qualifications of attorneys serving as panel members;
1329 (v) To promulgate rules and regulations necessary
1330 to implement the provisions of Section 24 of House Bill No. 13,
1331 2004 First Extraordinary Session; and
1332 (vi) To provide general administrative support.

1333 (2) Policies of liability insurance purchased for the
1334 protection of governmental entities against claims and suits
1335 brought under this chapter shall be purchased pursuant to the
1336 competitive bidding procedures set forth in Section 31-7-13.

1337 (3) The department shall have the following powers and
1338 duties:

1339 (a) To annually report to the Legislature concerning
1340 each comprehensive plan of liability protection established
1341 pursuant to Section 11-46-17(2). Such report shall include a
1342 comprehensive analysis of the cost of the plan, a breakdown of the
1343 cost to participating state entities, and such other information
1344 as the department may deem necessary.

1345 (b) To provide the board with any staff and meeting
1346 facilities as may be necessary to carry out the duties of the
1347 board as provided in this chapter.

1348 (c) To submit the board's budget request for the
1349 initial year of operation of the board in order to authorize
1350 expenditures for the 1993-1994 fiscal year and for the
1351 appropriation of such general funds as shall be required for the
1352 commencement of its activities.

1353 **[From and after July 1, 2005, this section shall read as**
1354 **follows:]**

1355 11-46-19. (1) The board shall have the following powers:

1356 (a) To provide oversight over the Tort Claims Fund;

1357 (b) To approve any award made from the Tort Claims
1358 Fund;

1359 (c) To pay all necessary expenses attributable to the
1360 operation of the Tort Claims Fund from such fund;

1361 (d) To assign litigated claims against governmental
1362 entities other than political subdivisions to competent attorneys
1363 unless such governmental entity has a staff attorney who is
1364 competent to represent the governmental entity and is approved by
1365 the board; the board shall give primary consideration to attorneys
1366 practicing in the jurisdiction where the claim arose in assigning
1367 cases; attorneys hired to represent a governmental entity other
1368 than a political subdivision shall be paid according to the
1369 department fee schedule;

1370 (e) To approve all claimants' attorney fees in claims
1371 against the state;

1372 (f) To employ on a full-time basis a staff attorney who
1373 shall possess the minimum qualifications required to be a member
1374 of The Mississippi Bar, and such other staff as it may deem
1375 necessary to carry out the purposes of this chapter; the employees
1376 in the positions approved by the board shall be hired by the
1377 director, shall be employees of the department, and shall be
1378 compensated from the Tort Claims Fund;

1379 (g) To contract with one or more reputable insurance
1380 consulting firms as may be necessary;

1381 (h) To purchase any policies of liability insurance and
1382 to administer any plan of self-insurance or policies of liability
1383 insurance required for the protection of the state against claims
1384 and suits brought under this chapter;

1385 (i) To expend money from the Tort Claims Fund for the
1386 purchase of any policies of liability insurance and the payment of
1387 any award or settlement of a claim against the state under the
1388 provisions of this chapter or of a claim against any school
1389 district, junior college or community college district, or state
1390 agency, arising from the operation of school buses or other
1391 vehicles, under the provisions of Section 37-41-42;

1392 (j) To cancel, modify or replace any policy or policies
1393 of liability insurance procured by the board;

1394 (k) To issue certificates of coverage to governmental
1395 entities, including any political subdivision participating in any
1396 plan of liability protection approved by the board;

1397 (l) To review and approve or reject any plan of
1398 liability insurance or self-insurance reserves proposed or
1399 provided by political subdivisions if such plan is intended to
1400 serve as security for risks of claims and suits against them for
1401 which immunity has been waived under this chapter;

1402 (m) To administer disposition of claims against the
1403 Tort Claims Fund;

1404 (n) To withhold issuance of any warrants payable from
1405 funds of a participating state entity should such entity fail to
1406 make required contributions to the Tort Claims Fund in the time
1407 and manner prescribed by the board;

1408 (o) To develop a comprehensive statewide list of
1409 attorneys who are qualified to represent the state and any
1410 employee thereof named as a defendant in a claim brought under
1411 this chapter against the state or such employee;

1412 (p) To develop a schedule of fees for paying attorneys
1413 defending claims against the state or an employee thereof;

1414 (q) To adopt and promulgate such reasonable rules and
1415 regulations and to do and perform all such acts as are necessary
1416 to carry out its powers and duties under this chapter;

1417 (r) To establish and assess premiums to be paid by
1418 governmental entities required to participate in the Tort Claims
1419 Fund;

1420 (s) To contract with a third-party administrator to
1421 process claims against the state under this chapter;

1422 (t) To annually submit its budget request to the
1423 Legislature as a state agency;

1424 (u) To dispose of salvage obtained in settlement or
1425 payment of any claim at fair market value by such means and upon
1426 such terms as the board may think best; and

1427 (v) To act as the board as required under House Bill
1428 No. 13, 2004 First Extraordinary Session, dealing with medical
1429 malpractice claims as follows:

1430 (i) To accept filings under the act;

1431 (ii) To coordinate the selection of panels;

1432 (iii) To maintain lists of attorneys eligible for
1433 appointment as attorney chairmen;

1434 (iv) To promulgate rules in reference to the
1435 qualifications of attorneys serving as panel members;

1436 (v) To promulgate rules and regulations necessary
1437 to implement the provisions of Section 24 of House Bill No. 13,
1438 2004 First Extraordinary Session; and

1439 (vi) To provide general administrative support.

1440 (2) Policies of liability insurance purchased for the
1441 protection of governmental entities against claims and suits
1442 brought under this chapter shall be purchased pursuant to the
1443 competitive bidding procedures set forth in Section 31-7-13.

1444 (3) The department shall have the following powers and
1445 duties:

1446 (a) To annually report to the Legislature concerning
1447 each comprehensive plan of liability protection established
1448 pursuant to Section 11-46-17(2). Such report shall include a
1449 comprehensive analysis of the cost of the plan, a breakdown of the

1450 cost to participating state entities, and such other information
1451 as the department may deem necessary.

1452 (b) To provide the board with any staff and meeting
1453 facilities as may be necessary to carry out the duties of the
1454 board as provided in this chapter.

1455 (c) To submit the board's budget request for the
1456 initial year of operation of the board in order to authorize
1457 expenditures for the 1993-1994 fiscal year and for the
1458 appropriation of such general funds as shall be required for the
1459 commencement of its activities.

1460 **SECTION 26.** All insurance companies writing insurance in the
1461 State of Mississippi shall roll back premium rates to the amount
1462 charged on January 1, 2004, unless such roll back shall result in
1463 an increase in premium rates. The Commissioner of Insurance shall
1464 enforce compliance with the provisions of this section. Any
1465 insurance company who violates the provisions of this section
1466 shall, upon conviction, be fined Fifty Thousand Dollars
1467 (\$50,000.00) for each violation.

1468 **SECTION 27.** If any provision of this act is held by a court
1469 to be invalid, such invalidity shall not affect the remaining
1470 provisions of this act, and to this end the provisions of this act
1471 are declared severable.

1472 **SECTION 28.** This act shall take effect and be in force from
1473 and after July 1, 2004, and Sections 1 through 7 of this act shall
1474 apply to all causes of action filed on or after that date.