

By: Representative Blackmon

To: Judiciary A

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 4

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE VENUE IN GENERAL CIVIL ACTIONS; TO PROVIDE FOR CLASS  
3 ACTIONS; TO AMEND SECTION 11-1-66, MISSISSIPPI CODE OF 1972, TO  
4 REVISE PREMISES LIABILITY; TO AMEND SECTION 85-5-7, MISSISSIPPI  
5 CODE OF 1972, TO REVISE JOINT AND SEVERAL LIABILITY; TO AMEND  
6 SECTION 13-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURORS  
7 CAN ONLY BE EXCUSED FROM SERVICE FOR ILLNESS OR UNDUE HARDSHIP; TO  
8 CODIFY SECTION 13-5-24, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
9 JURORS CAN POSTPONE JURY SERVICE ONE TIME ONLY; TO AMEND SECTION  
10 13-5-25, MISSISSIPPI CODE OF 1972, TO LIMIT THE FREQUENCY OF JURY  
11 SERVICE; TO AMEND SECTION 13-5-28, MISSISSIPPI CODE OF 1972, TO  
12 REQUIRE NOTICE OF JURY SERVICE EXEMPTION ENTITLEMENT TO BE  
13 INCLUDED IN JUROR SUMMONSES; TO AMEND SECTION 13-5-34, MISSISSIPPI  
14 CODE OF 1972, TO REVISE THE PUNISHMENT FOR FAILURE TO APPEAR FOR  
15 JURY SERVICE; TO CODIFY SECTION 13-5-99, MISSISSIPPI CODE OF 1972,  
16 TO PROVIDE EMPLOYMENT PROTECTIONS FOR JURORS; TO AMEND SECTION  
17 25-7-61, MISSISSIPPI CODE OF 1972, TO CREATE A LENGTHY TRIAL FUND;  
18 TO AMEND SECTION 33-1-5, MISSISSIPPI CODE OF 1972, TO ELIMINATE  
19 CERTAIN JUROR EXEMPTIONS; TO REPEAL SECTIONS 41-17-7 AND 47-5-55,  
20 MISSISSIPPI CODE OF 1972, WHICH PROVIDE CERTAIN EXEMPTIONS FROM  
21 JURY SERVICE; TO AMEND SECTION 11-46-1, MISSISSIPPI CODE OF 1972,  
22 TO REVISE THE DEFINITION OF "EMPLOYEE" FOR PURPOSES OF LIMITED  
23 LIABILITY UNDER THE TORT CLAIMS BOARD TO INCLUDE THOSE PHYSICIANS  
24 WHO PROVIDE HEALTH CARE SERVICES TO MEDICAID RECIPIENTS, STATE AND  
25 SCHOOL EMPLOYEES HEALTH INSURANCE PLAN PARTICIPANTS AND CHILDREN'S  
26 HEALTH INSURANCE PROGRAM PARTICIPANTS IF AT LEAST THIRTY-FIVE  
27 PERCENT OF THE PHYSICIAN'S PATIENTS ARE MEDICAID RECIPIENTS, OR  
28 NOT TO EXCEED ONE HUNDRED TWENTY-FIVE PHYSICIANS; TO INCLUDE  
29 CERTAIN RETIRED PHYSICIANS WHO PROVIDE VOLUNTEER UNPAID HEALTH  
30 CARE SERVICES TO ANY PUBLIC ENTITY OR PRIVATE ENTITY; TO CREATE IN  
31 THE STATE TREASURY A SPECIAL FUND TO THE CREDIT OF THE MISSISSIPPI  
32 TORT CLAIMS BOARD WHICH SHALL BE COMPRISED OF ANY FUNDS MADE  
33 AVAILABLE FOR THE FUND BY THE LEGISLATURE; TO PROVIDE THAT MONIES  
34 IN THE SPECIAL FUND SHALL BE EXPENDED BY THE MISSISSIPPI TORT  
35 CLAIMS BOARD TO PROVIDE ADDITIONAL FUNDS FOR PRIOR ACT COVERAGE  
36 FOR PLAN PARTICIPANTS AND TO PAY THE MEDICAL MALPRACTICE PREMIUMS  
37 FOR THOSE RETIRED PHYSICIANS DESCRIBED HEREIN; TO CREATE AN  
38 ADVISORY COUNCIL TO ASSIST THE MISSISSIPPI TORT CLAIMS BOARD IN  
39 DETERMINING WHETHER A PHYSICIAN MEETS THE PERCENTAGE REQUIREMENT  
40 NECESSARY TO QUALIFY AS AN EMPLOYEE FOR LIMITED LIABILITY  
41 PURPOSES; TO PROVIDE FOR MEDICAL PRACTICE OF DISCLOSURE; TO IMPOSE  
42 POWERS AND DUTIES ON THE STATE BOARD OF MEDICAL LICENSURE AND THE  
43 STATE DEPARTMENT OF HEALTH; TO PROVIDE FOR PENALTIES; TO AMEND  
44 SECTION 73-43-11, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO  
45 AMEND SECTION 73-25-27, MISSISSIPPI CODE OF 1972, TO PROVIDE THE  
46 RIGHT FOR HARMED PATIENTS TO ATTEND DISCIPLINARY PROCEEDINGS  
47 INVOLVING THE PHYSICIAN RESPONSIBLE FOR THE HARM; TO REQUIRE  
48 STATEWIDE PUBLICATION OF RECALL NOTICES; TO PROVIDE FOR A DIRECT  
49 ACTION AGAINST AN INSURER; TO PROVIDE THAT POLICY SHALL CONTAIN  
50 PROVISIONS THAT INSOLVENCY OR BANKRUPTCY OF THE INSURED SHALL NOT  
51 RELEASE THE INSURER FROM LIABILITY; TO PROVIDE THAT ACTIONS MAY BE  
52 BROUGHT AGAINST THE INSURER ALONE IN CERTAIN SITUATIONS; TO

PROVIDE THAT THE INSURANCE POLICY SHALL BE ADMISSIBLE INTO EVIDENCE; TO PROVIDE FOR BENCH TRIALS FOR CLAIMS OF \$50,000.00 OR LESS; TO PROVIDE FOR THE APPOINTMENT OF MAGISTRATES TO DISPOSE OF CERTAIN MATTERS IN CIRCUIT COURT; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

199           (c) Imposing conditions on the representative parties  
200 or on intervenors;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) In appointing class counsel, the court:

(i) Must consider:

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

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

252                   3. Counsel's knowledge of the applicable law;  
253 and

254                   4. The resources counsel will commit to  
255 representing the class;

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

259                   (iii) May direct potential class counsel to  
260 provide information on any subject pertinent to the appointment  
261 and to propose terms for attorney fees and nontaxable costs; and  
262                   (iv) May make further orders in connection with  
263 the appointment.

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

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

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

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

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

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

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



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

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

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

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

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

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

\* \* \*

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

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

\* \* \*

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

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

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

\* \* \*

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

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

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

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

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

\* \* \*

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

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

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

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

370               (iii) Suffer physical hardship that would result  
371 in illness or disease.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

606 33-1-5. Any member of the Mississippi National Guard on  
607 active duty shall be exempt from jury duty upon presenting a

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

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

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

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

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

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

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

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

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

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

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

642           (f) "Employee" means:

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

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

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

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

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

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

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

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

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

731           **SECTION 18.** The Tort Claims Board shall develop methods and  
732 promulgate rules and regulations to verify whether a physician  
733 meets the percentage requirement under Section 11-46-1(f) to  
734 qualify as an employee. There is created an advisory council to  
735 assist the Mississippi Tort Claims Board in determining whether a  
736 physician meets the percentage requirement under Section  
737 11-46-1(f) to qualify as an employee. The advisory council shall  
738 be composed of the Executive Director of the Mississippi Medical

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

**SECTION 19. Short title.**

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

**SECTION 20. Legislative intent.**

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

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

**SECTION 21. Collection of information.**

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

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

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

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

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

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

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



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

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

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

814           (j) Graduate medical education.

815           (k) Specialty board certification(s).

816           (l) Number of years in practice.

817           (m) Name of hospitals where the physician has  
818 privileges.

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

822           (o) Information regarding publications in peer-reviewed  
823 medical literature.

824           (p) Information regarding professional or community  
825 service activities and awards.

826           (q) The location of the physician's primary practice  
827 location.

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

830           (s) An indication of whether the physician participates  
831 in the Medicaid program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

902           **SECTION 24.   Reports of disciplinary action by professional**  
903 **medical organizations.**

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

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

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

927           **SECTION 25.   Reports by insurers of malpractice claims or**  
928 **actions.**

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

935 (a) Final judgment in any amount;

936 (b) Settlement in any amount; or

937 (c) Final disposition not resulting in payment on  
938 behalf of the insured.

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

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

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

946 (b) The name, address and age of the claimant or  
947 plaintiff.

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

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

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

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

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

958 **SECTION 26. Reports by physicians of settlements or**  
959 **arbitration awards.**

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

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

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

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

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

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

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

989 (3) The department shall disseminate information of Section  
990 21 of this act by posting the information on the state's website  
991 on the Internet.

992 **SECTION 28. Rules and regulations.**

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

999           **SECTION 29.** Section 73-43-11, Mississippi Code of 1972, is  
1000 amended as follows:

1001           73-43-11. The State Board of Medical Licensure shall have  
1002 the following powers and responsibilities:

1003           (a) Setting policies and professional standards  
1004 regarding the medical practice of physicians, osteopaths,  
1005 podiatrists and physician assistants practicing with physician  
1006 supervision;

1007           (b) Considering applications for licensure;

1008           (c) Conducting examinations for licensure;

1009           (d) Investigating alleged violations of the medical  
1010 practice act;

1011           (e) Conducting hearings on disciplinary matters  
1012 involving violations of state and federal law, probation,  
1013 suspension and revocation of licenses;

1014           (f) Considering petitions for termination of  
1015 probationary and suspension periods, and restoration of revoked  
1016 licenses;

1017           (g) To promulgate and publish reasonable rules and  
1018 regulations necessary to enable it to discharge its functions and  
1019 to enforce the provisions of law regulating the practice of  
1020 medicine;

1021           (h) To enter into contracts with any other state or  
1022 federal agency, or with any private person, organization or group  
1023 capable of contracting, if it finds such action to be in the  
1024 public interest and in the furtherance of its  
1025 responsibilities; \* \* \*

1026           (i) Perform the duties prescribed by Sections 73-26-1  
1027 through 73-26-5; and

1028           (j) Perform the duties prescribed by the Medical  
1029 Practice Disclosure Act.

1030           **SECTION 30.** Section 73-25-27, Mississippi Code of 1972, is  
1031 amended as follows:

1032           73-25-27. The Mississippi State Board of Medical Licensure  
1033 after notice and opportunity for a hearing to the licentiate, is  
1034 authorized to suspend or revoke for any cause named herein any  
1035 license it has issued, or the renewal thereof, that authorizes any  
1036 person to practice medicine, osteopathy, or any other method of  
1037 preventing, diagnosing, relieving, caring for, or treating, or  
1038 curing disease, injury or other bodily condition. The procedure  
1039 for suspension of a license for being out of compliance with an  
1040 order for support, and the procedure for the reissuance or  
1041 reinstatement of a license suspended for that purpose, and the  
1042 payment of any fees for the reissuance or reinstatement of a  
1043 license suspended for that purpose, shall be governed by Section  
1044 93-11-157 or 93-11-163, as the case may be. If there is any  
1045 conflict between any provision of Section 93-11-157 or 93-11-163  
1046 and any provision of this chapter, the provisions of Section  
1047 93-11-157 or 93-11-163, as the case may be, shall control.

1048           Such notice shall be effected by registered mail or personal  
1049 service setting forth the particular reasons for the proposed  
1050 action and fixing a date not less than thirty (30) days or more  
1051 than sixty (60) days from the date of such mailing or such  
1052 service, at which time the licentiate shall be given an  
1053 opportunity for a prompt and fair hearing. For the purpose of  
1054 such hearing the board, acting by and through its executive  
1055 office, may subpoena persons and papers on its own behalf and on  
1056 behalf of licentiate, including records obtained pursuant to  
1057 Section 73-25-28, may administer oaths and such testimony when  
1058 properly transcribed, together with such papers and exhibits,  
1059 shall be admissible in evidence for or against the licentiate. At  
1060 such hearing licentiate may appear by counsel and personally in  
1061 his own behalf. Any person sworn and examined as a witness in  
1062 such hearing shall not be held to answer criminally, nor shall any  
1063 papers or documents produced by such witness be competent evidence  
1064 in any criminal proceedings against such witness other than for



1065 perjury in delivering his evidence. Any patient or a  
1066 representative of the patient who has suffered harm by a physician  
1067 subject to a hearing under this section shall have the right to  
1068 attend all proceedings regarding such physician. Notice shall be  
1069 provided to the patient or his representative at the same time and  
1070 in the same manner as the notice is made to the physician. On the  
1071 basis of any such hearing, or upon default of the licentiate, the  
1072 Board of Medical Licensure shall make a determination specifying  
1073 its findings of fact and conclusions of law.

1074       A copy of such determination shall be sent by registered mail  
1075 or served personally upon the licentiate. The decision of the  
1076 Board of Medical Licensure revoking or suspending the license  
1077 shall become final thirty (30) days after so mailed or served  
1078 unless within said period the licentiate appeals the decision to  
1079 the chancery court, pursuant to the provisions hereof, and the  
1080 proceedings in chancery shall be conducted as other matters coming  
1081 before the court. All proceedings and evidence, together with  
1082 exhibits, presented at such hearing before the Board of Medical  
1083 Licensure in the event of appeal shall be admissible in evidence  
1084 in said court.

1085       The Board of Medical Licensure may subpoena persons and  
1086 papers on its own behalf and on behalf of the respondent,  
1087 including records obtained pursuant to Section 73-25-28, may  
1088 administer oaths, and may compel the testimony of witnesses. It  
1089 may issue commissions to take testimony, and testimony so taken  
1090 and sworn to shall be admissible in evidence for and against the  
1091 respondent. The Board of Medical Licensure shall be entitled to  
1092 the assistance of the chancery court or the chancellor in  
1093 vacation, which, on petition by the board, shall issue ancillary  
1094 subpoenas and petitions and may punish as for contempt of court in  
1095 the event of noncompliance therewith.

1096       Unless the court otherwise decrees, a license that has been  
1097 suspended by the Board of Medical Licensure for a stated period of

1098 time shall automatically become valid on the expiration of that  
1099 period and a license that has been suspended for an indefinite  
1100 period shall become again valid if and when the Board of Medical  
1101 Licensure so orders, which it may do on its own motion or on the  
1102 petition of the respondent. A license that has been revoked shall  
1103 not be restored to validity except: (1) after a rehearing by the  
1104 Board of Medical Licensure, on petition of the respondent, for  
1105 good cause shown, filed within ten (10) days, immediately  
1106 following the service on him of the order or judgment of the Board  
1107 of Medical Licensure revoking his license or (2) by order of the  
1108 court, on petition as aforesaid. Any licentiate whose license  
1109 becomes again valid after a period of suspension or after it has  
1110 been restored to validity after a rehearing or by an order of the  
1111 court, shall record it again in the office of the clerk of the  
1112 circuit court of the county in which he resides in conformity with  
1113 the requirements of Section 73-25-13. Nothing in this chapter  
1114 shall be construed as limiting or revoking the authority of any  
1115 court or of any licensing or registering officer or board, other  
1116 than the State Board of Medical Licensure, to suspend, revoke and  
1117 reinstate licenses and to cancel registrations under the  
1118 provisions of Section 41-29-311.

1119       **SECTION 31.** Any product sold or distributed in Mississippi  
1120 by any manufacturer or distributor licensed to do business or  
1121 doing business in Mississippi shall publish statewide notice of  
1122 any recall of any product or its component parts within thirty  
1123 (30) days of the recall. Any manufacturer or distributor who  
1124 fails to provide notice of a recall as required by this section  
1125 shall, upon conviction, be fined Fifty Thousand Dollars  
1126 (\$50,000.00) for each violation. The Attorney General shall  
1127 enforce compliance with the provisions of this section.

1128       **SECTION 32.** (1) No policy or contract of liability  
1129 insurance shall be issued or delivered in this state unless it  
1130 contains provisions to the effect that the insolvency or

1131 bankruptcy of the insured shall not release the insurer from the  
1132 payment of damages for injuries sustained or loss occasioned  
1133 during the existence of the policy. Any judgment which may be  
1134 rendered against the insured for which the insurer is liable which  
1135 shall have become executory shall be deemed prima facie evidence  
1136 of the insolvency of the insured, and an action may thereafter be  
1137 maintained within the terms and limits of the policy by the  
1138 injured person or his or her survivors or heirs against the  
1139 insurer.

1140       (2) (a) The injured person or his or her survivors or heirs  
1141 mentioned in subsection (1) of this section, at their option,  
1142 shall have a right of direct action against the insurer within the  
1143 terms and limits of the policy; and such action may be brought  
1144 against the insurer alone, or against both the insured and insurer  
1145 jointly and in solido, in the county in which the accident or  
1146 injury occurred or in the county in which an action could be  
1147 brought against either the insured or the insurer under the  
1148 general rules of venue prescribed by the Rules of Civil Procedure  
1149 only. However, such action may be brought against the insurer  
1150 alone only when:

1151               (i) The insured has been adjudged a bankrupt by a  
1152 court of competent jurisdiction or when proceedings to adjudge an  
1153 insured a bankrupt have been commenced before a court of competent  
1154 jurisdiction;

1155               (ii) The insured is insolvent;

1156               (iii) Service of citation or other process cannot  
1157 be made on the insured;

1158               (iv) When the cause of action is for damages as a  
1159 result of an offense or quasi-offense between children and their  
1160 parents or between married persons; or

1161               (v) When the insurer is an uninsured motorist  
1162 carrier.

1163           (b) This right of direct action shall exist whether or  
1164 not the policy of insurance sued upon was written or delivered in  
1165 the State of Mississippi and whether or not such policy contains a  
1166 provision forbidding such direct action, provided the accident or  
1167 injury occurred within the State of Mississippi. Nothing  
1168 contained in this section shall be construed to affect the  
1169 provisions of the policy or contract if such provisions are not in  
1170 violation of the laws of this state.

1171           (3) The policy or contract of liability insurance shall be  
1172 admissible into evidence in any proceeding regarding such policy  
1173 or contract of liability insurance.

1174           (4) It is the intent of this section that any action brought  
1175 under the provisions of this section shall be subject to all of  
1176 the lawful conditions of the policy or contract and the defenses  
1177 which could be urged by the insurer to a direct action brought by  
1178 the insured, provided the terms and conditions of such policy or  
1179 contract are not in violation of the laws of this state.

1180           (5) It is also the intent of this section that all liability  
1181 policies within their terms and limits are executed for the  
1182 benefit of all injured persons and their survivors or heirs to  
1183 whom the insured is liable and that it is the purpose of all  
1184 liability policies to give protection and coverage to all  
1185 insureds, whether they are named insureds or additional insureds  
1186 under the omnibus clause, for any legal liability such insured may  
1187 have as or for a tort-feasor within the terms and limits of such  
1188 policy.

1189           **SECTION 33.** Any claim filed alleging damages of Fifty  
1190 Thousand Dollars (\$50,000.00) or less shall receive a bench trial  
1191 in two hundred seventy (270) days or less. The claimant shall  
1192 state in his claim that the damages shall not exceed Fifty  
1193 Thousand Dollars (\$50,000.00).

1194           **SECTION 34.** In matters in circuit court, the board of  
1195 supervisors of any county is authorized to appoint a magistrate

1196 upon the recommendation of the circuit court judge to dispose of  
1197 procedural matters or any other matters assigned by the circuit  
1198 court. A magistrate shall serve at the will and pleasure of the  
1199 board of supervisors. Such appointment may be full time or part  
1200 time in the discretion of the board of supervisors. The salary of  
1201 the magistrate shall be set by the board of supervisors. A person  
1202 appointed as magistrate must be an attorney in good standing with  
1203 The Mississippi Bar who has been admitted to practice law for a  
1204 minimum of five (5) years and must be a resident of the circuit  
1205 court district in which the county is located. Any decision of a  
1206 magistrate may be appealed to the circuit court.

1207       **SECTION 35.** If any provision of this act is held by a court  
1208 to be invalid, such invalidity shall not affect the remaining  
1209 provisions of this act, and to this end the provisions of this act  
1210 are declared severable.

1211       **SECTION 36.** This act shall take effect and be in force from  
1212 and after July 1, 2004, and Sections 1 through 4 of this act shall  
1213 apply to all causes of action filed on or after that date.