

By: Representative Blackmon

To: Judiciary A

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; 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:

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

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

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

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

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

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

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

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

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

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

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

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

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