

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

3

4 COMMITTEE AMENDMENT WITHDRAWN AND
5 AMENDED

6 February 16, 2005

7

8

S. 83

9

10 Introduced by Senators McConnell, Moore, Campsen, Ryberg,
11 O'Dell, Elliott, Alexander, Gregory, Leatherman, Richardson and
12 Bryant

13

14 S. Printed 2/16/05--S.

[SEC 2/17/05 2:23 PM]

15 Read the first time January 11, 2005.

16

17

1
2
3
4
5
6
7
8
9
10

A BILL

11 TO ENACT THE “TORT REFORM ACT OF 2005 RELATING
12 TO MEDICAL MALPRACTICE” BY AMENDING TITLE 15,
13 CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING
14 TO CIVIL REMEDIES AND PROCEDURES, BY ADDING
15 ARTICLE 3, CHAPTER 32, SO AS TO ESTABLISH
16 PROCEDURES GOVERNING THE AWARD OF
17 NONECONOMIC DAMAGES; TO AMEND CHAPTER 35,
18 TITLE 15, RELATING TO CIVIL REMEDIES AND
19 PROCEDURES, BY ADDING SECTION 15-35-400, SO AS TO
20 PROVIDE FOR OFFERS OF JUDGMENT AFTER
21 COMMENCEMENT OF ANY CIVIL ACTION BASED ON
22 CONTRACT OR SEEKING THE RECOVERY OF MONEY
23 DAMAGES; TO AMEND CHAPTER 36, TITLE 15, RELATING
24 TO CIVIL REMEDIES AND PROCEDURES, BY ADDING
25 SECTION 15-36-100, SO AS TO ESTABLISH STANDARDS
26 FOR EXPERT WITNESSES IN PROFESSIONAL
27 MALPRACTICE ACTIONS; TO AMEND TITLE 15,
28 RELATING TO CIVIL REMEDIES AND PROCEDURES, BY
29 ADDING CHAPTER 79, SO AS TO PROVIDE FOR
30 MANDATORY MEDIATION AND TO PERMIT BINDING
31 ARBITRATION IN MEDICAL MALPRACTICE ACTIONS; TO
32 AMEND ARTICLE 1, CHAPTER 79, TITLE 38, RELATING TO
33 THE JOINT UNDERWRITING ASSOCIATION AND BOARD
34 OF GOVERNORS FOR THE PATIENTS’ COMPENSATION
35 FUND, BY ADDING SECTION 38-79-40, SO AS TO PROHIBIT
36 A PERSON SERVING IN THESE AGENCIES FROM BEING
37 EMPLOYED OR COMPENSATED BY EITHER OF THESE
38 AGENCIES; TO AMEND SECTION 38-79-460, RELATING TO
39 THE PATIENTS’ COMPENSATION FUND, SO AS TO
40 PROVIDE THAT THE FUND SHALL BE MANAGED BY THE
41 BOARD OF GOVERNORS RATHER THAN THE STATE
42 TREASURER; TO AMEND SECTION 38-79-470, RELATING

1 TO THE PATIENTS' COMPENSATION FUND, SO AS TO
2 PROVIDE THAT MONEY SHALL BE WITHDRAWN FROM
3 THE FUND UPON SIGNATURE OF THE CHAIRMAN OF THE
4 BOARD OF GOVERNORS; AND TO AMEND SECTION
5 40-47-211, RELATING TO THE BOARD OF MEDICAL
6 EXAMINERS, SO AS TO ALTER THE MEMBERSHIP OF THE
7 BOARD BY PROVIDING FOR LAY MEMBERS.

8 Amend Title To Conform

9

10 Be it enacted by the General Assembly of the State of South
11 Carolina:

12

13

PART I

14

GENERAL ASSEMBLY FINDINGS

15

16 SECTION 1. The General Assembly finds that the sections
17 presented in this act constitute one subject as required by Article
18 III, Section 17 of the South Carolina Constitution, in particular
19 finding that each change and each topic relates directly to or in
20 conjunction with other sections to the subject of tort and other civil
21 action reform as clearly enumerated in the title.

22 The General Assembly further finds that a common purpose or
23 relationship exists among the sections, representing a potential
24 plurality but not disunity of topics, notwithstanding that reasonable
25 minds might differ in identifying more than one topic contained in
26 the act.

27

28

PART II

29

DAMAGES

30

31 SECTION 2. Title 15 of the 1976 Code is amended by adding:

32

33

“CHAPTER 32

34

Article 3

35

Noneconomic Damage Awards

36

37 Section 15-32-200. This article may be cited as the ‘South
38 Carolina Noneconomic Damage Awards Act of 2005’.

39

40 Section 15-32-210. As used in this article, unless the context
41 clearly requires otherwise:

42 (1) ‘Ambulatory surgical facility’ means a licensed, distinct,
43 freestanding, self-contained entity that is organized, administered,

1 equipped, and operated exclusively for the purpose of performing
2 surgical procedures or related care, treatment, procedures, and/or
3 services, by licensed health care providers, for which patients are
4 scheduled to arrive, receive surgery or related care, treatment,
5 procedures, and/or services, and be discharged on the same day.
6 This term does not include abortion clinics.

7 (2) 'Claimant' means the person suffering personal injury.

8 (3) 'Economic damages' means pecuniary damages arising
9 from medical expenses and medical care, rehabilitation services,
10 costs associated with education, custodial care, loss of earnings
11 and earning capacity, loss of income, burial costs, loss of use of
12 property, costs of repair or replacement of property, costs of
13 obtaining substitute domestic services, a claim for loss of spousal
14 services, loss of employment, loss of business or employment
15 opportunities, loss of retirement income, and other monetary
16 losses.

17 (4) 'Health care institution' means an ambulatory surgical
18 facility, a hospital, an institutional general infirmary, a nursing
19 home, and a renal dialysis facility.

20 (5) 'Health care provider' means a physician, surgeon,
21 osteopath, nurse, oral surgeon, dentist, pharmacist, chiropractor,
22 optometrist, podiatrist, or similar category of licensed health care
23 provider, including a health care practice, association, partnership,
24 or other legal entity.

25 (6) 'Hospital' means a licensed facility with an organized
26 medical staff to maintain and operate organized facilities and
27 services to accommodate two or more nonrelated persons for the
28 diagnosis, treatment, and care of such persons over a period
29 exceeding twenty-four hours and provides medical and surgical
30 care of acute illness, injury, or infirmity and may provide
31 obstetrical care, and in which all diagnoses, treatment, or care are
32 administered by or performed under the direction of persons
33 currently licensed to practice medicine and surgery in the State of
34 South Carolina. This term includes a hospital that provides
35 specialized service for one type of care, such as tuberculosis,
36 maternity, or orthopedics.

37 (7) 'Institutional general infirmary' means a licensed facility
38 which is established within the jurisdiction of a larger nonmedical
39 institution and which maintains and operates organized facilities
40 and services to accommodate two or more nonrelated students,
41 residents, or inmates with illness, injury, or infirmity for a period
42 exceeding twenty-four hours for the diagnosis, treatment, and care
43 of such persons and which provides medical, surgical, and

1 professional nursing care, and in which all diagnoses, treatment or
2 care are administered by or performed under the direction of
3 persons currently licensed to practice medicine and surgery in the
4 State of South Carolina.

5 (8) 'Medical malpractice' means doing that which the
6 reasonably prudent health care provider or health care institution
7 would not do or not doing that which the reasonably prudent health
8 care provider or health care institution would do in the same or
9 similar circumstances.

10 (9) 'Noneconomic damages' means nonpecuniary damages
11 arising from pain, suffering, inconvenience, physical impairment,
12 disfigurement, mental anguish, emotional distress, loss of society
13 and companionship, loss of consortium, injury to reputation,
14 humiliation, other nonpecuniary damages, and any other theory of
15 damages including, but not limited to, fear of loss, illness, or
16 injury.

17 (10) 'Nursing home' means a licensed facility with an organized
18 nursing staff to maintain and operate organized facilities and
19 services to accommodate two or more unrelated persons over a
20 period exceeding twenty-four hours which is operated either in
21 connection with a hospital or as a freestanding facility for the
22 express or implied purpose of providing skilled nursing services
23 for persons who are not in need of hospital care. This term does
24 not include assisted living, independent living, or community
25 residential care facilities that do not provide skilled nursing
26 services.

27 (11) 'Personal injury' means injuries to the person including,
28 but not limited to, bodily injuries, mental distress or suffering, loss
29 of wages, loss of services, loss of consortium, and other
30 noneconomic damages and actual economic damages.

31 (12) 'Personal injury action' means an action for personal
32 injury, including a wrongful death action pursuant to Sections
33 15-51-10 through 15-51-60 and a survival action pursuant to
34 Section 15-5-90.

35 (13) 'Renal dialysis facility' means an outpatient facility which
36 offers staff assisted dialysis or training and supported services for
37 self-dialysis to end-stage renal disease patients.

38 (14) 'Skilled nursing services' means services that:

39 (a) are ordered by a physician;

40 (b) require the skills of technical or professional personnel
41 such as registered nurses, licensed practical (vocational) nurses,
42 physical therapists, occupational therapists, and speech
43 pathologists or audiologists; and

1 (c) are furnished directly by, or under the supervision of
2 such personnel.

3
4 Section 15-32-220.(A) In an action on a medical malpractice
5 claim when final judgment is rendered against a single health care
6 provider the limit of civil liability for noneconomic damages of the
7 health care provider is limited to an amount not to exceed three
8 hundred fifty thousand dollars for each claimant, regardless of the
9 number of separate causes of action on which the claim is based.

10 (B) In an action on a medical malpractice claim when final
11 judgment is rendered against a single health care institution, the
12 limit of civil liability for noneconomic damages is limited to an
13 amount not to exceed three hundred fifty thousand dollars for each
14 claimant, regardless of the number of separate causes of action on
15 which the claim is based.

16 (C) In an action on a medical malpractice claim when final
17 judgment is rendered against more than one health care institution,
18 or more than one health care provider, or any combination thereof,
19 the limit of civil liability for noneconomic damages for each health
20 care institution and each health care provider is limited to an
21 amount not to exceed three hundred fifty thousand dollars for each
22 claimant and the limit of civil liability for noneconomic damages
23 for all health care institutions and health care providers is limited
24 to an amount not to exceed one million fifty thousand dollars for
25 each claimant.

26 (D)(1) The provisions of this section do not limit the amount of
27 compensation for economic damages suffered by each claimant in
28 a medical malpractice claim.

29 (2) The provisions of this section do not limit the amount
30 of punitive damages in cases where the plaintiff is able to prove an
31 entitlement to an award of punitive damages as required by law.

32 (E) The limitations for noneconomic damages rendered against
33 any health care provider do not apply if the jury or court
34 determines that the defendant was grossly negligent, wilful,
35 wanton, or reckless, and such conduct was the proximate cause of
36 the claimant's noneconomic damages, or if the defendant has
37 engaged in fraud or misrepresentation related to the claim, or if the
38 defendant altered or destroyed medical records with the purpose of
39 avoiding a claim or liability to the claimant.

40 (F) At the end of each calendar year, the State Budget and
41 Control Board, Board of Economic Advisors must determine the
42 increase or decrease in the ratio of the Consumer Price Index to the
43 index as of December 31 of the previous year, and the limitation

1 on compensation for noneconomic damages pursuant to subsection
2 (A), (B), or (C) must be increased or decreased accordingly. As
3 soon as practicable after this adjustment is calculated, the Director
4 of the State Budget and Control Board shall submit the revised
5 limitation on compensation to the State Register for publication
6 pursuant to Section 1-23-40(2), and the revised limitation becomes
7 effective upon publication in the State Register. For purposes of
8 this subsection, 'Consumer Price Index' means the Consumer Price
9 Index for All Urban Consumers as published by the United States
10 Department of Labor, Bureau of Labor Statistics.

11

12 Section 15-32-230. The provisions of this article do not affect
13 any right, privilege, or provision of the South Carolina Tort Claims
14 Act pursuant to Chapter 78, Title 15."

15

16

PART III
PROCEDURAL PROVISIONS

17

18

19 SECTION 3. Chapter 35, Title 15 of the 1976 Code is amended
20 by adding:

21

22 "Section 15-35-400. (A) Offer of Judgment. Except in
23 domestic relations actions, after commencement of any civil action
24 based upon contract or seeking the recovery of money damages,
25 whether or not other relief is sought, any party may, at any time
26 more than twenty days before the actual trial date, file with the
27 clerk of the court a written offer of judgment signed by the offeror
28 or his attorney, directed to the opposing party, offering to take
29 judgment in the offeror's favor, or as the case may be, to allow
30 judgment to be taken against the offeror, for a sum stated therein,
31 for property, or to the effect specified in the offer. The offeror
32 shall give notice of the offer of judgment to the offeree's attorney,
33 or if the offeree is not represented by an attorney, to the offeree
34 himself, in accordance with the service rules for motions and other
35 pleadings set forth in the South Carolina Rules of Civil Procedure.
36 Within twenty days after notification, or at least ten days prior to
37 the trial date, whichever date is earlier, the offeree or his attorney
38 may file with the clerk of the court a written acceptance of the
39 offer of judgment. Upon the filing, the clerk shall enter
40 immediately judgment of the stipulation. If the offer of judgment
41 is not accepted within twenty days after notification or prior to or
42 on the tenth day before the actual trial date, whichever date occurs
43 first, the offer shall be considered rejected and evidence thereof is

1 not to be admissible except in a proceeding after the trial to fix
2 costs, interests, attorney's fees, and other recoverable monies. Any
3 offeror may withdraw an offer of judgment prior to its acceptance
4 or prior to the date on which it would be considered rejected by
5 giving notice to the offeree or his attorney in accordance with the
6 service rules for motions and other pleadings outlined in the South
7 Carolina Rules of Civil Procedure. Any offeror may file a
8 subsequent offer of judgment in any amount provided that the
9 subsequent offer supercedes any earlier offer that was rejected by
10 the offeree or withdrawn by the offeror, and, on filing, terminates
11 any rights of interest or costs that may have been applicable to the
12 superceded offer. Notwithstanding this provision, an offer is not
13 considered rejected upon the making of a counteroffer by the
14 offeree, but shall remain effective until accepted, rejected, or
15 withdrawn as provided in this subsection. Any and all offers of
16 judgment and any acceptance of offers of judgment must be
17 included by the clerk in the record of the case.

18 (B) Consequences of Non-Acceptance. If an offer of judgment
19 is not accepted and the offeror obtains a verdict or determination at
20 least as favorable as the rejected offer, the offeror shall be allowed
21 to recover from the offeree: (1) any administrative, filing, or other
22 court costs from the date of the offer until judgment; (2) if the
23 offeror is a plaintiff, eight percent interest computed on the amount
24 of the verdict or award from the date of the offer; or (3) if the
25 offeror is a defendant, a reduction from the judgment or award of
26 eight percent interest computed on the amount of the verdict or
27 award from the date of the offer.

28 (C) This section shall not be interpreted to abrogate the
29 contractual rights of any party concerning the recovery of
30 attorney's fees or other monies in accordance with the provisions
31 of any written contract between the parties to the action."
32

33 SECTION 4. Chapter 36, Title 15 of the 1976 Code is amended
34 by adding:

35
36 "Section 15-36-100. (A) As used in this section, 'expert
37 witness' means an expert who is qualified as to the acceptable
38 conduct of the professional whose conduct is at issue and who:

39 (1) is licensed by an appropriate regulatory agency to
40 practice his or her profession in the location in which the expert
41 practices or teaches; and

42 (2)(a) is board certified by a national or international
43 association or academy which administers written and oral

1 examinations for certification in the area of practice or specialty
2 about which the opinion on the standard of care is offered; or

3 (b) has actual professional knowledge and experience in
4 the area of practice or specialty in which the opinion is to be given
5 as the result of having been regularly engaged in:

6 (i) the active practice of the area of specialty of his or
7 her profession for at least three of the last five years immediately
8 preceding the opinion;

9 (ii) the teaching of the area of practice or specialty of
10 his or her profession for at least half of his or her professional time
11 as an employed member of the faculty of an educational institution
12 which is accredited in the teaching of his or her profession for at
13 least three of the last five years immediately preceding the opinion;
14 or

15 (iii) any combination of the active practice or the
16 teaching of his or her profession in a manner which meets the
17 requirements of subitems (i) and (ii) for at least three of the last
18 five years immediately preceding the opinion;

19 (3) is an individual not covered by subsections (A)(1) or (2),
20 that has scientific, technical, or other specialized knowledge which
21 may assist the trier of fact in understanding the evidence and
22 determining a fact or issue in the case, by reason of the
23 individual's study, experience, or both. However, an affidavit filed
24 pursuant to subsection (B) by an expert qualified under this
25 subsection must contain an explanation of the expert's credentials
26 and why the expert is qualified to conduct the review required by
27 subsection (B). The defendant is entitled to challenge the
28 sufficiency of the expert's credentials pursuant to subsection (E).

29 (B) In an action for damages alleging professional negligence
30 against a professional licensed by or registered with the State of
31 South Carolina and listed in subsection (G) or against any licensed
32 health care facility alleged to be liable based upon the action or
33 inaction of a health care professional licensed by the State of South
34 Carolina and listed in subsection (G), the plaintiff must file as part
35 of the complaint an affidavit of an expert witness which must
36 specify at least one negligent act or omission claimed to exist and
37 the factual basis for each claim based on the available evidence at
38 the time of the filing of the affidavit.

39 (C)(1) The contemporaneous filing requirement of subsection
40 (B) does not apply to any case in which the period of limitation
41 will expire, or there is a good faith basis to believe it will expire on
42 a claim stated in the complaint, within ten days of the date of filing
43 and, because of the time constraints, the plaintiff alleges that an

1 affidavit of an expert could not be prepared. In such a case, the
2 plaintiff has forty-five days after the filing of the complaint to
3 supplement the pleadings with the affidavit. Upon motion, the trial
4 court, after hearing and for good cause, may extend the time as the
5 court determines justice requires. If an affidavit is not filed within
6 the period specified in this subsection or as extended by the trial
7 court and the defendant against whom an affidavit should have
8 been filed alleges, by motion to dismiss filed contemporaneously
9 with its initial responsive pleading that the plaintiff has failed to
10 file the requisite affidavit, the complaint is subject to dismissal for
11 failure to state a claim. The filing of a motion to dismiss pursuant
12 to this section, shall alter the period for filing an answer to the
13 complaint in accordance with Rule 12(a), South Carolina Rules of
14 Civil Procedure.

15 (2) The contemporaneous filing requirement of subsection
16 (B) is not required to support a pleaded specification of negligence
17 involving subject matter that lies within the ambit of common
18 knowledge and experience, so that no special learning is needed to
19 evaluate the conduct of the defendant.

20 (D) This section does not extend an applicable period of
21 limitation, except that, if the affidavit is filed within the period
22 specified in this section, the filing of the affidavit after the
23 expiration of the statute of limitations is considered timely and
24 provides no basis for a statute of limitations defense.

25 (E) If a plaintiff files an affidavit which is allegedly defective,
26 and the defendant to whom it pertains alleges, with specificity, by
27 motion to dismiss filed contemporaneously with its initial
28 responsive pleading, that the affidavit is defective, the plaintiff's
29 complaint is subject to dismissal for failure to state a claim, except
30 that the plaintiff may cure the alleged defect by amendment within
31 thirty days of service of the motion alleging that the affidavit is
32 defective. The trial court may, in the exercise of its discretion,
33 extend the time for filing an amendment or response to the motion,
34 or both, as the trial court determines justice requires. The filing of
35 a motion to dismiss pursuant to this section shall alter the period
36 for filing an answer to the complaint in accordance with Rule
37 12(a), South Carolina Rules of Civil Procedure.

38 (F) If a plaintiff fails to file an affidavit as required by this
39 section, and the defendant raises the failure to file an affidavit by
40 motion to dismiss filed contemporaneously with its initial
41 responsive pleading, the complaint is not subject to renewal after
42 the expiration of the applicable period of limitation unless a court
43 determines that the plaintiff had the requisite affidavit within the

1 time required pursuant to this section and the failure to file the
2 affidavit is the result of a mistake. The filing of a motion to
3 dismiss pursuant to this section shall alter the period for filing an
4 answer to the complaint in accordance with Rule 12(a), South
5 Carolina Rules of Civil Procedure.

6 (G) This section applies to the following professions:

- 7 (1) architects;
- 8 (2) attorneys at law;
- 9 (3) certified public accountants;
- 10 (4) chiropractors;
- 11 (5) dentists;
- 12 (6) land surveyors;
- 13 (7) medical doctors;
- 14 (8) marriage and family therapists;
- 15 (9) nurses;
- 16 (10) occupational therapists;
- 17 (11) optometrists;
- 18 (12) osteopathic physicians;
- 19 (13) pharmacists;
- 20 (14) physical therapists;
- 21 (15) physicians' assistants;
- 22 (16) professional counselors;
- 23 (17) professional engineers;
- 24 (18) podiatrists;
- 25 (19) psychologists;
- 26 (20) radiological technicians;
- 27 (21) respiratory therapists; and
- 28 (22) veterinarians.”

29

30 SECTION 5. Title 15 of the 1976 Code is amended by adding:

31

32

“CHAPTER 79

33

34 Section 15-79-110. As used in this chapter:

- 35 (1) ‘Ambulatory surgical facility’ means a licensed, distinct,
36 freestanding, self-contained entity that is organized, administered,
37 equipped, and operated exclusively for the purpose of performing
38 surgical procedures or related care, treatment, procedures, and/or
39 services, by licensed health care providers, for which patients are
40 scheduled to arrive, receive surgery or related care, treatment,
41 procedures, and/or services, and be discharged on the same day.
42 This term does not include abortion clinics.

1 (2) 'Health care institution' means an ambulatory surgical
2 facility, a hospital, an institutional general infirmary, a nursing
3 home, and a renal dialysis facility.

4 (3) 'Health care provider' means a physician, surgeon,
5 osteopath, nurse, oral surgeon, dentist, pharmacist, chiropractor,
6 optometrist, podiatrist, or any similar category of licensed health
7 care provider, including a health care practice, association,
8 partnership, or other legal entity.

9 (4) 'Hospital' means a licensed facility with an organized
10 medical staff to maintain and operate organized facilities and
11 services to accommodate two or more nonrelated persons for the
12 diagnosis, treatment, and care of such persons over a period
13 exceeding twenty-four hours and provides medical and surgical
14 care of acute illness, injury, or infirmity and may provide
15 obstetrical care, and in which all diagnoses, treatment, or care are
16 administered by or performed under the direction of persons
17 currently licensed to practice medicine and surgery in the State of
18 South Carolina. This term includes a hospital that provides
19 specialized service for one type of care, such as tuberculosis,
20 maternity, or orthopedics.

21 (5) 'Institutional general infirmary' means a licensed facility
22 which is established within the jurisdiction of a larger nonmedical
23 institution and which maintains and operates organized facilities
24 and services to accommodate two or more nonrelated students,
25 residents or inmates with illness, injury or infirmity for a period
26 exceeding twenty-four hours for the diagnosis, treatment, and care
27 of such persons and which provides medical, surgical and
28 professional nursing care, and in which all diagnoses, treatment or
29 care are administered by or performed under the direction of
30 persons currently licensed to practice medicine and surgery in the
31 State of South Carolina.

32 (6) 'Medical malpractice' means doing that which the
33 reasonably prudent health care provider or health care institution
34 would not do or not doing that which the reasonably prudent health
35 care provider or health care institution would do in the same or
36 similar circumstances.

37 (7) 'Nursing home' means a licensed facility with an organized
38 nursing staff to maintain and operate organized facilities and
39 services to accommodate two or more unrelated persons over a
40 period exceeding twenty-four hours which is operated either in
41 connection with a hospital or as a freestanding facility for the
42 express or implied purpose of providing skilled nursing services
43 for persons who are not in need of hospital care. This term does

1 not include assisted living, independent living, or community
2 residential care facilities that do not provide skilled nursing
3 services.

4 (8) 'Renal dialysis facility' means an outpatient facility which
5 offers staff assisted dialysis or training and supported services for
6 self-dialysis to end-stage renal disease patients.

7 (9) 'Skilled nursing services' means services that:

8 (a) are ordered by a physician;

9 (b) require the skills of technical or professional personnel
10 such as registered nurses, licensed practical (vocational) nurses,
11 physical therapists, occupational therapists, and speech
12 pathologists or audiologists; and

13 (c) are furnished directly by, or under the supervision of
14 such personnel.

15

16 Section 15-79-120. At any time before a medical malpractice
17 action is brought to trial, the parties shall participate in mediation
18 governed by procedures established in the South Carolina Circuit
19 Court Alternative Dispute Resolution Rules in effect at the time for
20 the State or any portion of the State. Parties may also agree to
21 participate in binding arbitration.

22

23 Section 15-79-130. If a judge finds that an expert health care
24 provider or health care institution in a medical malpractice action
25 in this State has offered testimony or evidence in bad faith or
26 without a reasonable basis in fact or otherwise acted unethically in
27 conjunction with testifying as an expert in deposition or at trial, the
28 judge must report the expert to the state entity that licenses and
29 regulates the profession of the expert or the type of health care
30 entity represented by the expert."

31

32

PART IV

33

JOINT UNDERWRITING ASSOCIATION

34

35 SECTION 6. Article 1, Chapter 79, Title 38 of the 1976 Code is
36 amended by adding:

37

38 "Section 38-79-40. A person who serves on the Board of the
39 Joint Underwriting Association or the Board of Governors of the
40 Patients' Compensation Fund is prohibited from being employed
41 in any manner or compensated by the Joint Underwriting
42 Association or the Patients' Compensation Fund, and this

1 prohibition continues for one year after the person ceases to be a
2 member of the board.

3 No provision of this section may be construed to prohibit an
4 insurance agent from selling insurance products to the
5 association.”

6
7 SECTION 7. Section 38-79-460 of the 1976 Code is amended to
8 read:

9
10 “Section 38-79-460. The ~~Fund~~ fund, and any income from it,
11 ~~must be held in trust, deposited in the office of the State Treasurer~~
12 ~~and kept in a segregated account entitled ‘Patients’ Compensation~~
13 ~~Fund’, invested and reinvested by the State Treasurer in the same~~
14 ~~manner as provided by law for the investment of other state funds~~
15 ~~in interest-bearing investments and may not become a part of the~~
16 ~~general fund of the State. All expenses of collecting, protecting,~~
17 ~~and administering the Fund must be paid from the Fund managed~~
18 ~~by the board according to its plan of operation developed pursuant~~
19 ~~to Section 38-79-430.”~~

20
21 SECTION 8. Section 38-79-470(1) of the 1976 Code is amended
22 to read:

23
24 “(1) Monies may be withdrawn from the ~~Fund~~ fund only upon
25 the signature of the chairman of the Board of Governors or his
26 designee ~~upon written warrants of the Comptroller General, drawn~~
27 ~~on the State Treasurer to the payee designated in the requisition.”~~

28
29
30 PART V
31 MEDICAL DISCIPLINARY COMMISSION

32 SECTION 9. Section 40-47-211 of the 1976 Code is amended to
33 read:

34
35 “Section 40-47-211. (A) There is created the Medical
36 Disciplinary Commission of the State Board of Medical Examiners
37 to be composed of ~~thirty-six~~ forty-two members. ~~The members of~~
38 ~~the commission~~ Of these, thirty-six must be licensed physicians
39 practicing their profession, ~~and five~~ Five physician
40 commissioners must be elected from each of the six congressional
41 districts, and six physician members of the commission must be
42 elected at large from across the State. The board shall conduct the
43 elections, and the elections for the physician members shall

1 provide for participation by any physician currently licensed and
2 actively practicing medicine in South Carolina and residing in the
3 congressional district in which the election is held. At-large
4 physician members must be currently licensed and actively
5 practicing medicine in South Carolina and must reside within the
6 State at the time of election and throughout their ~~term~~ terms. One
7 physician commissioner initially elected from each district shall
8 serve for a term of one year and until his successor is elected and
9 qualifies, one physician commissioner initially elected from each
10 district shall serve for a term of two years and until his successor is
11 elected and qualifies, and one physician commissioner initially
12 elected from each district shall serve for a term of three years and
13 until his successor is elected and qualifies. The successors of the
14 initial physician commissioners shall serve for terms of three years
15 or until their successors are elected and qualify. The members of
16 the commission are limited to three terms. The members
17 appointed to the board may not simultaneously serve as a
18 commissioner. In case of any vacancy by way of death,
19 resignation, or otherwise, the board shall appoint a successor to
20 serve for the unexpired term. Where justice, fairness, or other
21 circumstances so require, the board may appoint past
22 commissioners to hear complaints in individual cases.

23 (B) Six members of the commission must be lay commissioners
24 who each must have, at a minimum, a baccalaureate degree or the
25 equivalent, and have no ascertainable ties to the health care
26 industry. The lay commissioners must be appointed by the
27 Governor from each of the six congressional districts, with the
28 advice and consent of the Senate. Each lay commissioner must be
29 a registered voter and reside in the congressional district he
30 represents throughout his term. Each lay commissioner initially
31 elected from each district shall serve for a term of three years and
32 until his successor is elected and qualifies. The lay commissioners
33 are limited to three consecutive terms.

34 (C) The commission is empowered to investigate and hear
35 those complaints against physicians (medical and osteopathic) filed
36 with the board pursuant to Section 40-47-200. The hearing must
37 be conducted in accordance with Act 176 of 1977 (Administrative
38 Procedures Act) and with regulations promulgated by the board
39 and must be before a panel composed of at least three
40 commissioners designated by the board, and one of those three
41 commissioners must be a lay member. The panel is empowered to
42 hear the matters complained of and to make findings of fact and
43 recommendations as to disposition of those matters to the board.

1 The panel shall make a certified report of the proceedings before it,
2 including its findings of fact, conclusions, and recommendations,
3 which must be filed together with a transcript of the testimony
4 taken and exhibits as may have been in evidence before it with the
5 administrator of the board, and a copy of the report must be
6 delivered to the office of general counsel and the licensee or his
7 counsel.”

8
9
10
11
12
13
14

PART VI
DEPARTMENT OF INSURANCE AND GENERAL
ASSEMBLY
REVIEW OF INSURER’S REDUCTION OF PREMIUMS TO
REFLECT SAVINGS

15 SECTION 10. The Department of Insurance shall review data
16 reported on annual statements by liability insurers, including, but
17 not limited to, paid claims, reserves, loss adjustment expenses, and
18 such additional data as the department may require by
19 promulgation of bulletin, to determine savings related to a decrease
20 in litigation and claims paid pursuant to litigation after the
21 effective date of this act. The department may require special
22 reports from insurers to determine if savings are realized as a result
23 of the provisions of this act. The department shall compile a report
24 of savings realized and submit it for General Assembly review
25 upon request. Costs or expenses associated with the compilation
26 of this report of savings shall be paid by the insurers pursuant to
27 the provisions of Chapter 13 of Title 38. The Department of
28 Insurance shall review premium and losses by line of insurance to
29 determine if appropriate adjustments have been made based upon
30 the department estimates of savings realized pursuant to the
31 provisions of this act.

32

33 SECTION 11. As a majority of the health care community is
34 insured through the South Carolina Medical Malpractice Joint
35 Underwriting Association and the Patients’ Compensation Fund
36 and as it is essential for the General Assembly to understand the
37 effects of changes to tort laws, the South Carolina Department of
38 Insurance is given authority to request data regarding changes in
39 claims practices from the South Carolina Medical Malpractice
40 Joint Underwriting Association and the Patients’ Compensation
41 Fund. Such data may include paid claims, paid loss adjustment
42 expense, case reserves, bulk reserves, and claim counts by quarter
43 for the previous five years. The department may make such a

1 request of the South Carolina Medical Malpractice Joint
2 Underwriting Association and the Patients' Compensation Fund
3 and such information must be provided within thirty days.

4 The Department of Insurance shall report annually to the
5 Speaker of the House of Representatives, the President Pro
6 Tempore of the Senate, and the Governor as to whether this and
7 other related enactments have resulted in reductions in premiums
8 and as to any other trends of significance which might impact
9 premium cost.

10

11

12

13

PART VII
MISCELLANEOUS

14 SECTION 12. The provisions of this act do not affect any right,
15 privilege, or provision of the South Carolina Tort Claims Act as
16 contained in Chapter 78, Title 15 of the 1976 Code of South
17 Carolina or the South Carolina Solicitation of Charitable Funds
18 Act as contained in Chapter 56 of Title 33.

19

20 SECTION 13. The repeal or amendment by this act of any law,
21 whether temporary or permanent or civil or criminal, does not
22 affect pending actions, rights, duties, or liabilities founded thereon,
23 or alter, discharge, release or extinguish any penalty, forfeiture, or
24 liability incurred under the repealed or amended law, unless the
25 repealed or amended provision shall so expressly provide. After
26 the effective date of this act, all laws repealed or amended by this
27 act must be taken and treated as remaining in full force and effect
28 for the purpose of sustaining any pending or vested right, civil
29 action, special proceeding, criminal prosecution, or appeal existing
30 as of the effective date of this act, and for the enforcement of
31 rights, duties, penalties, forfeitures, and liabilities as they stood
32 under the repealed or amended laws.

33

34 SECTION 14. If any section, subsection, item, subitem,
35 paragraph, subparagraph, sentence, clause, phrase, or word of this
36 act is for any reason held to be unconstitutional or invalid, such
37 holding shall not affect the constitutionality or validity of the
38 remaining portions of this act, the General Assembly hereby
39 declaring that it would have passed this act, and each and every
40 section, subsection, item, subitem, paragraph, subparagraph,
41 sentence, clause, phrase, and word thereof, irrespective of the fact
42 that any one or more other sections, subsections, items, subitems,
43 paragraphs, subparagraphs, sentences, clauses, phrases, or words

1 hereof may be declared to be unconstitutional, invalid, or
2 otherwise ineffective.

3

4 SECTION 15. Upon approval by the Governor, this act takes
5 effect July 1, 2005, for claims arising after July 1, 2005, except
6 that as of this act's effective date, the State Treasurer shall
7 relinquish the management of funds in the Patients' Compensation
8 Fund, created pursuant to Section 38-79-420, to the Board of
9 Governors of the fund, and premiums paid on or after this act's
10 effective date must be deposited with the Board of Governors of
11 the fund. The fund must be fully transferred to the Board of
12 Governors, and the State Treasurer may not hold any deposits of
13 the fund as of ninety days after this act's effective date.

14

---XX---

15