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To: Judiciary, Division A

COMMITTEE SUBSTITUTE  
 FOR  
 SENATE BILL NO. 2763

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO  
 2 REVISE THE VENUE IN GENERAL CIVIL ACTIONS; TO AMEND SECTION  
 3 11-1-60, MISSISSIPPI CODE OF 1972, TO PROVIDE LIMITATIONS ON  
 4 NONECONOMIC DAMAGES IN ALL CIVIL ACTIONS; TO AMEND SECTION  
 5 11-1-63, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PRODUCT  
 6 SELLER OTHER THAN A MANUFACTURER SHALL NOT BE LIABLE FOR A LATENT  
 7 DEFECT IF THE SELLER IS A MERE CONDUIT WHO PURCHASED THE PRODUCT  
 8 FROM A REPUTABLE MANUFACTURER; TO AMEND SECTION 11-1-65,  
 9 MISSISSIPPI CODE OF 1972, TO PROHIBIT MULTIPLE PUNITIVE DAMAGE  
 10 AWARDS FOR THE SAME CONDUCT OF A DEFENDANT EXCEPT IN CERTAIN  
 11 CASES, TO PROHIBIT PUNITIVE DAMAGES AGAINST A DEFENDANT FOR ANY  
 12 REGULATED ACTIVITY CONDUCTED IN COMPLIANCE WITH FEDERAL AND STATE  
 13 REGULATIONS, AND TO REVISE THE MAXIMUM AMOUNT OF PUNITIVE DAMAGE  
 14 AWARDS; TO AMEND SECTION 11-1-66, MISSISSIPPI CODE OF 1972, TO  
 15 REVISE THE IMMUNITY OF PREMISES OWNERS FROM CIVIL LIABILITY; TO  
 16 AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE THE  
 17 LIMITATION OF JOINT AND SEVERAL LIABILITY FOR DAMAGES CAUSED BY  
 18 TWO OR MORE PERSONS; TO REPEAL SECTION 11-1-64, MISSISSIPPI CODE  
 19 OF 1972, WHICH PROVIDES THE PROCEDURE FOR DISMISSING A DEFENDANT  
 20 WHOSE LIABILITY IS BASED SOLELY ON HIS STATUS AS A SELLER IN THE  
 21 STREAM OF COMMERCE; TO AMEND SECTION 13-5-1, MISSISSIPPI CODE OF  
 22 1972, TO ELIMINATE CERTAIN JUROR DISQUALIFICATIONS; TO AMEND  
 23 SECTION 13-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURORS  
 24 CAN ONLY BE EXCUSED FROM SERVICE FOR ILLNESS OR UNDUE HARDSHIP; TO  
 25 CODIFY SECTION 13-5-24, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
 26 JURORS CAN POSTPONE JURY SERVICE ONE TIME ONLY; TO AMEND SECTION  
 27 13-5-25, MISSISSIPPI CODE OF 1972, TO LIMIT THE FREQUENCY OF JURY  
 28 SERVICE; TO AMEND SECTION 13-5-28, MISSISSIPPI CODE OF 1972, TO  
 29 REQUIRE NOTICE OF JURY SERVICE EXEMPTION ENTITLEMENT TO BE  
 30 INCLUDED IN JUROR SUMMONSES; TO AMEND SECTION 13-5-34, MISSISSIPPI  
 31 CODE OF 1972, TO REVISE THE PUNISHMENT FOR FAILURE TO APPEAR FOR  
 32 JURY SERVICE; TO CODIFY SECTION 13-5-99, MISSISSIPPI CODE OF 1972,  
 33 TO PROVIDE EMPLOYMENT PROTECTIONS FOR JURORS; TO AMEND SECTION  
 34 25-7-61, MISSISSIPPI CODE OF 1972, TO CREATE A LENGTHY TRIAL FUND;  
 35 TO AMEND SECTION 33-1-5, MISSISSIPPI CODE OF 1972, TO ELIMINATE  
 36 CERTAIN JUROR EXEMPTIONS; TO REPEAL SECTIONS 41-17-7 AND 47-5-55,  
 37 MISSISSIPPI CODE OF 1972, WHICH PROVIDE CERTAIN EXEMPTIONS FROM  
 38 JURY SERVICE; TO PROVIDE THAT ALL MALPRACTICE CLAIMS SHALL BE  
 39 REVIEWED BY A MEDICAL REVIEW PANEL; TO ALLOW PARTIES TO MUTUALLY  
 40 AGREE TO OPT OUT OF THIS REQUIREMENT; TO ESTABLISH THE MEMBERSHIP  
 41 REVIEW PANEL; TO PROVIDE WHAT EVIDENCE MAY BE CONSIDERED BY THE  
 42 PANEL; TO PROVIDE THE FORM OF THE DECISION; TO PROVIDE FOR  
 43 PANELIST IMMUNITY AND COMPENSATION; TO PROVIDE THAT THE LOSING  
 44 PARTY SHALL PAY ATTORNEY FEES TO THE PREVAILING PARTY UNDER  
 45 CERTAIN CIRCUMSTANCES; AND FOR RELATED PURPOSES.

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

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

49           11-11-3. (1) (a) (i) Civil actions of which the circuit  
50 court has original jurisdiction shall be commenced in the county  
51 where the defendant resides, or, if a corporation, in the county  
52 of its principal place of business, or in the county where a  
53 substantial alleged act or omission occurred or where a  
54 substantial event that caused the injury occurred.

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

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

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

67           (3) Notwithstanding subsection (1) of this section, any  
68 action against a licensed physician, osteopath, dentist, nurse,  
69 nurse practitioner, physician assistant, psychologist, pharmacist,  
70 podiatrist, optometrist, chiropractor, institution for the aged or  
71 infirm, hospital or licensed pharmacy, including any legal entity  
72 which may be liable for their acts or omissions, for malpractice,  
73 negligence, error, omission, mistake, breach of standard of care  
74 or the unauthorized rendering of professional services shall be  
75 brought only in the county in which the alleged act or omission  
76 occurred.

77           (4) (a) If a court of this state, on written motion of a  
78 party, finds that in the interest of justice and for the  
79 convenience of the parties and witnesses a claim or action would  
80 be more properly heard in a forum outside this state or in a  
81 different county of proper venue within this state, the court

82 shall decline to adjudicate the matter under the doctrine of forum  
83 non conveniens. As to a claim or action that would be more  
84 properly heard in a forum outside this state, the court shall  
85 dismiss the claim or action. As to a claim or action that would  
86 be more properly heard in a different county of proper venue  
87 within this state, the venue shall be transferred to the  
88 appropriate county. In determining whether to grant a motion to  
89 dismiss an action or to transfer venue under the doctrine of forum  
90 non conveniens, the court shall give consideration to the  
91 following factors:

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

93 (ii) Availability and cost of compulsory process  
94 for attendance of unwilling witnesses;

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

97 (iv) Unnecessary expense or trouble to the  
98 defendant not necessary to the plaintiff's own right to pursue his  
99 remedy;

100 (v) Administrative difficulties for the forum  
101 courts;

102 (vi) Existence of local interests in deciding the  
103 case at home; and

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

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

115 claim was filed in this state and ending on the date the claim is  
116 dismissed.

117 \* \* \*

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

120 11-1-60. (1) For the purposes of this section, the  
121 following words and phrases shall have the meanings ascribed  
122 herein unless the context clearly requires otherwise:

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

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

140 \* \* \*

141 (2) Nothing contained in subsection (1) of this section  
142 shall be construed as creating a cause of action or as setting  
143 forth elements of or types of damages that are or are not  
144 recoverable in any type of cause of action.

145 (3) (a) Regardless of the number of parties against whom an  
146 action is brought or the number of separate claims or actions  
147 brought with respect to the same injury, for causes of action

148 filed on or after July 1, 2004, the aggregate amount recoverable  
149 for noneconomic damages by a plaintiff in any claim for injury  
150 shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00).

151 \* \* \*

152 (b) The jury shall not be advised of the limitations  
153 imposed by this subsection (2), and the judge shall appropriately  
154 reduce any award of noneconomic damages that exceeds the  
155 applicable limitation.

156 \* \* \*

157 (4) Nothing in this section shall be construed to impose a  
158 limitation on \* \* \* actual economic damages.

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

161 11-1-63. \* \* \* In any action for damages caused by a product  
162 except for commercial damage to the product itself:

163 (a) The manufacturer or seller of the product shall not  
164 be liable if the claimant does not prove by the preponderance of  
165 the evidence that at the time the product left the control of the  
166 manufacturer or seller:

167 (i) 1. The product was defective because it  
168 deviated in a material way from the manufacturer's specifications  
169 or from otherwise identical units manufactured to the same  
170 manufacturing specifications, or

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

173 3. The product was designed in a defective  
174 manner, or

175 4. The product breached an express warranty  
176 or failed to conform to other express factual representations upon  
177 which the claimant justifiably relied in electing to use the  
178 product; and

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

181                   (iii) The defective and unreasonably dangerous  
182 condition of the product proximately caused the damages for which  
183 recovery is sought.

184                   (b) A product is not defective in design or formulation  
185 if the harm for which the claimant seeks to recover compensatory  
186 damages was caused by an inherent characteristic of the product  
187 which is a generic aspect of the product that cannot be eliminated  
188 without substantially compromising the product's usefulness or  
189 desirability and which is recognized by the ordinary person with  
190 the ordinary knowledge common to the community.

191                   (c) (i) In any action alleging that a product is  
192 defective because it failed to contain adequate warnings or  
193 instructions pursuant to paragraph (a)(i)2 of this section, the  
194 manufacturer or seller shall not be liable if the claimant does  
195 not prove by the preponderance of the evidence that at the time  
196 the product left the control of the manufacturer or seller, the  
197 manufacturer or seller knew or in light of reasonably available  
198 knowledge should have known about the danger that caused the  
199 damage for which recovery is sought and that the ordinary user or  
200 consumer would not realize its dangerous condition.

201                   (ii) An adequate product warning or instruction is  
202 one that a reasonably prudent person in the same or similar  
203 circumstances would have provided with respect to the danger and  
204 that communicates sufficient information on the dangers and safe  
205 use of the product, taking into account the characteristics of,  
206 and the ordinary knowledge common to an ordinary consumer who  
207 purchases the product; or in the case of a prescription drug,  
208 medical device or other product that is intended to be used only  
209 under the supervision of a physician or other licensed  
210 professional person, taking into account the characteristics of,  
211 and the ordinary knowledge common to, a physician or other  
212 licensed professional who prescribes the drug, device or other  
213 product.

214 (d) In any action alleging that a product is defective  
215 pursuant to paragraph (a) of this section, the manufacturer or  
216 seller shall not be liable if the claimant (i) had knowledge of a  
217 condition of the product that was inconsistent with his safety;  
218 (ii) appreciated the danger in the condition; and (iii)  
219 deliberately and voluntarily chose to expose himself to the danger  
220 in such a manner to register assent on the continuance of the  
221 dangerous condition.

222 (e) In any action alleging that a product is defective  
223 pursuant to paragraph (a)(i)2 of this section, the manufacturer or  
224 seller shall not be liable if the danger posed by the product is  
225 known or is open and obvious to the user or consumer of the  
226 product, or should have been known or open and obvious to the user  
227 or consumer of the product, taking into account the  
228 characteristics of, and the ordinary knowledge common to, the  
229 persons who ordinarily use or consume the product.

230 (f) In any action alleging that a product is defective  
231 because of its design pursuant to paragraph (a)(i)3 of this  
232 section, the manufacturer or product seller shall not be liable if  
233 the claimant does not prove by the preponderance of the evidence  
234 that at the time the product left the control of the manufacturer  
235 or seller:

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

240 (ii) The product failed to function as expected  
241 and there existed a feasible design alternative that would have to  
242 a reasonable probability prevented the harm. A feasible design  
243 alternative is a design that would have to a reasonable  
244 probability prevented the harm without impairing the utility,  
245 usefulness, practicality or desirability of the product to users  
246 or consumers.

247 (g) (i) The manufacturer of a product who is found  
248 liable for a defective product pursuant to paragraph (a) shall  
249 indemnify a product seller for the costs of litigation, any  
250 reasonable expenses, reasonable attorney's fees and any damages  
251 awarded by the trier of fact unless the seller exercised  
252 substantial control over that aspect of the design, testing,  
253 manufacture, packaging or labeling of the product that caused the  
254 harm for which recovery of damages is sought; the seller altered  
255 or modified the product, and the alteration or modification was a  
256 substantial factor in causing the harm for which recovery of  
257 damages is sought; the seller had actual knowledge of the  
258 defective condition of the product at the time he supplied same;  
259 or the seller made an express factual representation about the  
260 aspect of the product which caused the harm for which recovery of  
261 damages is sought.

262 (ii) Subparagraph (i) shall not apply unless the  
263 seller has given prompt notice of the suit to the manufacturer  
264 within ninety (90) days of the service of the complaint against  
265 the seller.

266 (h) In any action alleging that a product is defective  
267 pursuant to paragraph (a) of this section, the seller of a product  
268 other than the manufacturer shall not be liable unless the seller  
269 exercised substantial control over that aspect of the design,  
270 testing, manufacture, packaging or labeling of the product that  
271 caused the harm for which recovery of damages is sought; or the  
272 seller altered or modified the product, and the alteration or  
273 modification was a substantial factor in causing the harm for  
274 which recovery of damages is sought; or the seller had actual  
275 knowledge of the defective condition of the product at the time he  
276 supplied the product. It is the intent of this section to  
277 insulate innocent sellers who are not actively negligent, but  
278 instead are mere conduits of a product, from forum-driven  
279 lawsuits.



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

283           **SECTION 4.** Section 11-1-65, Mississippi Code of 1972, is  
284 amended as follows:

285           11-1-65. (1) For the purposes of this section,  
286 "compensatory" means the amount of money awarded to a party for  
287 the party's actual damages, whether economic or noneconomic.

288           (2) In any action in which punitive damages are sought:

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

294           (b) Punitive damages shall not be awarded against a  
295 defendant for any activity that is subject to regulation by a  
296 state or federal governmental entity that was in compliance at the  
297 time of the activity with specifically applicable regulations of  
298 the state or federal governmental entity, provided that the  
299 applicable regulations were promulgated for the purpose of  
300 protecting the public against the harm or danger that is the  
301 subject of the complaint.

302           (c) In any action pursuant to Section 11-1-63, punitive  
303 damages shall not be awarded against any defendant who was in  
304 compliance with specifically applicable regulations of a state or  
305 federal governmental entity, provided that the applicable  
306 regulations were promulgated for the purpose of protecting the  
307 public against the harm or danger that is the subject of the  
308 complaint.

309           (d) In any action in which the claimant seeks an award  
310 of punitive damages, the trier of fact shall first determine  
311 whether compensatory damages are to be awarded and in what amount,  
312 before addressing any issues related to punitive damages.

313           (e) If, but only if, an award of compensatory damages  
314 has been made against a party, the court shall promptly commence  
315 an evidentiary hearing before the same trier of fact to determine  
316 whether punitive damages may be considered.

317           (f) The court shall determine whether the issue of  
318 punitive damages may be submitted to the trier of fact; and, if  
319 so, the trier of fact shall determine whether to award punitive  
320 damages and in what amount.

321           (g) In all cases involving an award of punitive  
322 damages, the fact finder, in determining the amount of punitive  
323 damages, shall consider, to the extent relevant, the  
324 following: \* \* \* the nature and reprehensibility of the  
325 defendant's wrongdoing, for example, the impact of the defendant's  
326 conduct on the plaintiff, or the relationship of the defendant to  
327 the plaintiff; the defendant's awareness of the amount of harm  
328 being caused and the defendant's motivation in causing such harm;  
329 the duration of the defendant's misconduct and whether the  
330 defendant attempted to conceal such misconduct; and any other  
331 circumstances shown by the evidence that bear on determining a  
332 proper amount of punitive damages. The trier of fact shall be  
333 instructed that the primary purpose of punitive damages is to  
334 punish the wrongdoer and deter similar misconduct in the future by  
335 the defendant and others while the purpose of compensatory damages  
336 is to make the plaintiff whole.

337           (h) (i) Before entering judgment for an award of  
338 punitive damages the trial court shall ascertain that the award is  
339 reasonable in its amount and rationally related to the purpose to  
340 punish what occurred giving rise to the award and to deter its  
341 repetition by the defendant and others.

342                   (ii) In determining whether the award is  
343 excessive, the court shall take into consideration the following  
344 factors:

345                   1. Whether there is a reasonable relationship  
346 between the punitive damage award and the harm likely to result  
347 from the defendant's conduct as well as the harm that actually  
348 occurred;

349                   2. The degree of reprehensibility of the  
350 defendant's conduct, the duration of that conduct, the defendant's  
351 awareness, any concealment, and the existence and frequency of  
352 similar past conduct;

353                   3. In mitigation, the financial condition and  
354 net worth of the defendant; and

355                   4. In mitigation, the imposition of criminal  
356 sanctions on the defendant for its conduct and the existence of  
357 other civil awards against the defendant for the same conduct.

358           (2) The seller of a product other than the manufacturer  
359 shall not be liable for punitive damages unless the seller  
360 exercised substantial control over that aspect of the design,  
361 testing, manufacture, packaging or labeling of the product that  
362 caused the harm for which recovery of damages is sought; the  
363 seller altered or modified the product, and the alteration or  
364 modification was a substantial factor in causing the harm for  
365 which recovery of damages is sought; the seller had actual  
366 knowledge of the defective condition of the product at the time he  
367 supplied same \* \* \*.

368           (3) (a) In any civil action where an entitlement to  
369 punitive damages shall have been established under applicable  
370 laws, no award of punitive damages shall exceed three (3) times  
371 the compensatory damages awarded to the plaintiff; however, in no  
372 event shall an award of punitive damages awarded against any  
373 defendant in any civil action exceed the following:

374                   (i) Ten Million Dollars (\$10,000,000.00) for a  
375 defendant with a net worth of more than One Billion Dollars  
376 (\$1,000,000,000.00);

377 (ii) Seven Million Five Hundred Thousand Dollars  
378 (\$7,500,000.00) for a defendant with a net worth of more than  
379 Seven Hundred Fifty Million Dollars (\$750,000,000.00) but not more  
380 than One Billion Dollars (\$1,000,000,000.00);

381 (iii) Five Million Dollars (\$5,000,000.00) for a  
382 defendant with a net worth of more than Five Hundred Million  
383 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty  
384 Million Dollars (\$750,000,000.00);

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

389 (v) Two Million Five Hundred Thousand Dollars  
390 (\$2,500,000.00) for a defendant with a net worth of more than  
391 Fifty Million Dollars (\$50,000,000.00) but not more than One  
392 Hundred Million Dollars (\$100,000,000.00); or

393 (vi) Two percent (2%) of the defendant's net worth  
394 for a defendant with a net worth of Fifty Million Dollars  
395 (\$50,000,000.00) or less.

396 (b) For the purposes of determining the defendant's net  
397 worth in paragraph (a), the amount of the net worth shall be  
398 determined in accordance with Generally Accepted Accounting  
399 Principles.

400 (c) The limitation on the amount of punitive damages  
401 imposed by this subsection (3) shall not be disclosed to the trier  
402 of fact, but shall be applied by the court to any punitive damages  
403 verdict.

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

408 (i) If the defendant was convicted of a felony  
409 under the laws of this state or under federal law which caused the  
410 damages or injury; or

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

414 (e) An employer or principal shall not be held liable  
415 for punitive damages under a theory of vicarious liability.

416 \* \* \*

417 (f) If the jury awards a plaintiff punitive damages,  
418 the plaintiff also shall be entitled to reasonable attorneys' fees  
419 to be awarded by the court.

420 (4) Nothing in this section shall be construed as creating a  
421 right to an award of punitive damages or to limit the duty of the  
422 court, or the appellate courts, to scrutinize all punitive damage  
423 awards, ensure that all punitive damage awards comply with  
424 applicable procedural, evidentiary and constitutional  
425 requirements, and to order remittitur where appropriate.

426 \* \* \*

427 **SECTION 5.** Section 11-1-66, Mississippi Code of 1972, is  
428 amended as follows:

429 11-1-66. (1) No owner, occupant, lessee or managing agent  
430 of property shall be civilly liable for failing to prevent or  
431 failing to deter any act or omission committed by another person  
432 upon the property or premises that is a reckless, wanton,  
433 intentionally wrongful, illegal or criminal act.

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

439 **SECTION 6.** Section 85-5-7, Mississippi Code of 1972, is  
440 amended as follows:

441 85-5-7. (1) As used in this section "fault" means an act or  
442 omission of a person which is a proximate cause of injury or death  
443 to another person or persons, damages to property, tangible or  
444 intangible, or economic injury, including, but not limited to,  
445 negligence, malpractice, strict liability, absolute liability or  
446 failure to warn. "Fault" shall not include any tort which results  
447 from an act or omission committed with a specific wrongful intent.

448 \* \* \*

449 (2) Except as otherwise provided in subsection (4) of this  
450 section, in any civil action based on fault, the liability for  
451 damages caused by two (2) or more persons shall be several only,  
452 and not joint and several and a joint tort-feasor shall be liable  
453 only for the amount of damages allocated to him in direct  
454 proportion to his percentage of fault. In assessing percentages  
455 of fault an employer and the employer's employee or a principal  
456 and the principal's agent shall be considered as one (1) defendant  
457 when the liability of such employer or principal has been caused  
458 by the wrongful or negligent act or omission of the employee or  
459 agent.

460 \* \* \*

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

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

470 (5) In actions involving joint tort-feasors, the trier of  
471 fact shall determine the percentage of fault for each party  
472 alleged to be at fault without regard to whether the joint  
473 tort-feasor is immune from damages. Fault allocated under this

474 subsection to an immune tort-feasor or a tort-feasor whose  
475 liability is limited by law shall not be reallocated to any other  
476 tort-feasor.

477 \* \* \*

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

481 **SECTION 7.** Section 11-1-64, Mississippi Code of 1972, which  
482 provides the procedure for dismissing a defendant whose liability  
483 is based solely on his status as a seller in the stream of  
484 commerce, is hereby repealed.

485 **SECTION 8.** Section 13-5-1, Mississippi Code of 1972, is  
486 amended as follows:

487 13-5-1. Every citizen not under the age of twenty-one (21)  
488 years, who is either a qualified elector, or a resident freeholder  
489 of the county for more than one (1) year, is able to read and  
490 write, and has not been convicted of a felony within the past ten  
491 (10) years is a competent juror. \* \* \* The lack of any such  
492 qualifications on the part of one or more jurors shall not,  
493 however, vitiate an indictment or verdict. Moreover, \* \* \* no  
494 juror shall serve on any jury who has served as such for the last  
495 preceding two (2) years. No juror \* \* \* who has a case of his own  
496 pending in that court \* \* \* shall serve in his own case.

497 In order to determine that prospective jurors can read and  
498 write, the presiding judge shall, with the assistance of the  
499 clerk, distribute to the jury panel a form to be completed  
500 personally by each juror prior to being empaneled as follows:

501 "1. Your name \_\_\_\_\_ Last \_\_\_\_\_ First \_\_\_\_\_ Middle  
502 initial

503 2. Your home address \_\_\_\_\_

504 3. Your occupation \_\_\_\_\_

505 4. Your age \_\_\_\_\_

506 5. Your telephone number \_\_\_\_\_ If none, write 'None'

507           6. If you live outside the county seat, the number of miles  
508 you live from the courthouse \_\_\_\_\_ miles  
509 \_\_\_\_\_

510       Sign your name"

511           The judge shall personally examine the answers of each juror  
512 prior to empaneling the jury and each juror who cannot complete  
513 the above form shall be disqualified as a juror and discharged.

514           A list of any jurors disqualified for jury duty by reason of  
515 inability to complete the form shall be kept by the circuit clerk  
516 and their names shall not be placed in the jury box thereafter  
517 until such person can qualify as above provided.

518           **SECTION 9.** Section 13-5-23, Mississippi Code of 1972, is  
519 amended as follows:

520           13-5-23. (1) All qualified persons shall be liable to serve  
521 as jurors, unless excused by the court for one (1) of the  
522 following causes:

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

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

528       \* \* \*

529           (2) An excuse of illness under subsection (1)(a) of this  
530 section may be made to the clerk of court outside of open court by  
531 providing the clerk with \* \* \* a certificate of a licensed  
532 physician \* \* \*, stating that the juror is ill and is unfit for  
533 jury service, in which case the clerk may excuse the juror. If  
534 the excuse of illness is not supported by a physician's  
535 certificate, a judge of the court for which the individual was  
536 called to jury service shall decide whether to excuse an  
537 individual under subsection (1)(a) of this section.



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

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

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

549               (iii) Suffer physical hardship that would result  
550 in illness or disease.

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

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

558       (d) A person asking to be excused based on a finding of  
559 undue or extreme physical or financial hardship must take all  
560 actions necessary to have obtained a ruling on that request by no  
561 later than the date on which the individual is scheduled to appear  
562 for jury duty.

563       (e) A person asking a judge to grant an excuse under  
564 subsection (1)(b) of this section shall be required to provide the  
565 judge with documentation such as, but not limited to, federal and  
566 state income tax returns, medical statements from licensed  
567 physicians, proof of dependency or guardianship and similar  
568 documents, which the judge finds to clearly support the request to  
569 be excused. Failure to provide satisfactory documentation shall  
570 result in a denial of the request to be excused.

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

577       \* \* \*

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

582       **SECTION 10.** The following provision shall be codified as  
583 Section 13-5-24, Mississippi Code of 1972:

584       13-5-24. (1) Notwithstanding any other provisions of this  
585 chapter, individuals scheduled to appear for jury service have the  
586 right to postpone the date of their initial appearance for jury  
587 service one (1) time only. Postponements shall be granted upon  
588 request, provided that:

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

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

594               (c) Prior to the grant of a postponement with the  
595 concurrence of the clerk of the court, the prospective juror fixes  
596 a date certain to appear for jury service that is not more than  
597 six (6) months after the date on which the prospective juror  
598 originally was called to serve and on which date the court will be  
599 in session.

600       (2) A subsequent request to postpone jury service may be  
601 approved by a judicial officer only in the event of an extreme  
602 emergency, such as a death in the family, sudden illness, or a  
603 natural disaster or a national emergency in which the prospective

604 juror is personally involved, that could not have been anticipated  
605 at the time the initial postponement was granted. Prior to the  
606 grant of a second postponement, the prospective juror must fix a  
607 date certain on which the individual will appear for jury service  
608 within six (6) months of the postponement on a date when the court  
609 will be in session.

610 **SECTION 11.** Section 13-5-25, Mississippi Code of 1972, is  
611 amended as follows:

612 13-5-25. Every citizen over sixty-five (65) years of age,  
613 and everyone who has served on the regular panel as a juror in the  
614 actual trial of one or more litigated cases within two (2) years,  
615 shall be exempt from service if he claims the privilege \* \* \*. No  
616 qualified juror shall be excluded because of any such reasons, but  
617 the same shall be a personal privilege to be claimed by any person  
618 selected for jury duty. Any citizen over sixty-five (65) years of  
619 age may claim this personal privilege outside of open court by  
620 providing the clerk of court with information that allows the  
621 clerk to determine the validity of the claim.

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

626 **SECTION 12.** Section 13-5-28, Mississippi Code of 1972, is  
627 amended as follows:

628 13-5-28. If a grand, petit or other jury is ordered to be  
629 drawn, the clerk thereafter shall cause each person drawn for jury  
630 service to be served with a summons, either personally or by mail,  
631 addressed to him at his usual residence, business or post office  
632 address, requiring him to report for jury service at a specified  
633 time and place. The summons shall include instructions to the  
634 potential jurors that explain, in layman's terms, the provisions  
635 of Section 13-5-23.

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

638           13-5-34. (1) A person summoned for jury service who fails  
639 to appear or to complete jury service as directed, and who has  
640 failed to obtain a postponement in compliance with the provisions  
641 for requesting a postponement, or who fails to appear on the date  
642 set pursuant to Section 13-5-24 shall be ordered by the court to  
643 appear forthwith and show cause for his failure to comply with the  
644 summons. If he fails to show good cause for noncompliance with  
645 the summons he is in civil contempt of court and \* \* \* may be  
646 fined not more than Five Hundred Dollars (\$500.00) or imprisoned  
647 not more than three (3) days, or both. The prospective juror may  
648 be excused from paying sanctions for good cause shown or in the  
649 interest of justice.

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

656           **SECTION 14.** The following provision shall be codified as  
657 Section 13-5-99, Mississippi Code of 1972:

658           13-5-99. (1) It shall be unlawful for any employer or any  
659 other person to persuade or attempt to persuade any juror to avoid  
660 jury service; to intimidate or to threaten any juror in that  
661 respect; or to remove or otherwise subject an employee to adverse  
662 employment action as a result of jury service if the employee  
663 notifies his or her employer that he or she has been summoned to  
664 serve as a juror within a reasonable period of time after receipt  
665 of a summons.

666           (2) It shall be unlawful for an employer to require or  
667 request an employee to use annual, vacation or sick leave for time  
668 spent responding to a summons for jury duty, time spent

669 participating in the jury selection process, or time spent  
670 actually serving on a jury. Nothing in this provision shall be  
671 construed to require an employer to provide annual, vacation or  
672 sick leave to employees under the provisions of this statute who  
673 otherwise are not entitled to such benefits under company  
674 policies.

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

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

685 **SECTION 15.** Section 25-7-61, Mississippi Code of 1972, is  
686 amended as follows:

687 25-7-61. (1) Fees of jurors shall be payable as follows:

688 (a) Grand jurors and petit jurors in the chancery,  
689 county, circuit and special eminent domain courts shall be paid an  
690 amount to be set by the board of supervisors, not to be less than  
691 Twenty-five Dollars (\$25.00) per day and not to be greater than  
692 Forty Dollars (\$40.00) per day, plus mileage authorized in Section  
693 25-3-41. In the trial of all cases where jurors are in charge of  
694 bailiffs and are not permitted to separate, the sheriff with the  
695 approval of the trial judge may pay for room and board of jurors  
696 on panel for actual time of trial.

697 No grand juror shall receive any compensation except mileage  
698 unless he shall have been sworn as provided by Section 13-5-45;  
699 and no petit juror except those jurors called on special venires  
700 shall receive any compensation authorized under this subsection

701 except mileage unless he shall have been sworn as provided by  
702 Section 13-5-71.

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

709 (c) Jurors in the justice courts shall be paid an  
710 amount of not less than Ten Dollars (\$10.00) per day and not more  
711 than Fifteen Dollars (\$15.00) per day, to be established by the  
712 board of supervisors. In all criminal cases in the justice court  
713 wherein the prosecution fails, the fees of jurors shall be paid by  
714 the county treasurer on order of the board of supervisors on  
715 certificate of the county attorney in all counties that have  
716 county attorneys, otherwise by the justice court judge.

717 (2) Any juror may return the fees provided as compensation  
718 for service as a juror to the county which paid for such person's  
719 service as a juror. The fees returned to the county may be  
720 earmarked for a particular purpose to be selected by the juror,  
721 including:

722 (a) The local public library;

723 (b) Local law enforcement;

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

726 (d) Any other governmental agency.

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

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

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

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

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

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

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

748                   (c) The court may pay replacement or supplemental wages  
749 of up to Three Hundred Dollars (\$300.00) per day per juror  
750 beginning on the eleventh day of jury service. In addition, for  
751 any jurors who qualify for payment by virtue of having served on a  
752 jury for more than ten (10) days, the court, upon finding that  
753 such service posed a significant financial hardship to a juror,  
754 even in light of payments made with respect to jury service after  
755 the tenth day, may award replacement or supplemental wages of up  
756 to One Hundred Dollars (\$100.00) per day from the fourth to the  
757 tenth day of jury service.

758                   (d) Any juror who is serving or has served on a jury  
759 that qualifies for payment from the Lengthy Trial Fund, provided  
760 the service commenced on or after the effective date of Senate  
761 Bill No. 2763, 2004 Regular Session, may submit a request for  
762 payment from the Lengthy Trial Fund on a form that the  
763 administrator provides. Payment shall be limited to the  
764 difference between the state-paid jury fee and the actual amount  
765 of wages a juror earns, up to the maximum level payable, minus any

766 amount the juror actually receives from the employer during the  
767 same time period.

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

773 (ii) The juror also shall be required to submit  
774 verification from the employer as to the wage information provided  
775 to the administrator, for example, the employee's most recent  
776 earnings statement or similar document, prior to initiation of  
777 payment from the fund.

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

783 **SECTION 16.** Section 33-1-5, Mississippi Code of 1972, is  
784 amended as follows:

785 33-1-5. Any member of the Mississippi National Guard on  
786 active duty shall be exempt from jury duty upon presenting a  
787 current written statement from his superior officer that such jury  
788 service will be likely to interfere with his military duties.

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

792 **SECTION 18.** Section 47-5-55, Mississippi Code of 1972, which  
793 provides for the exemption from jury service of state correctional  
794 system employees and officers, is repealed.

795 **SECTION 19. Medical review panel.**

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

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



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

800 (ii) "Health care provider" means a person,  
801 partnership, limited liability partnership, limited liability  
802 company, corporation, facility, or institution licensed by this  
803 state to provide health care or professional services as a  
804 physician, hospital, institution for the aged or infirm, community  
805 blood center, tissue bank, dentist, registered or licensed  
806 practical nurse or certified nurse assistant, ambulance service,  
807 certified registered nurse anesthetist, nurse midwife, licensed  
808 midwife, pharmacist, optometrist, podiatrist, chiropractor,  
809 physical therapist, occupational therapist, psychologist, social  
810 worker, licensed professional counselor, or any nonprofit facility  
811 considered tax-exempt under Section 501(c)(3), Internal Revenue  
812 Code, pursuant to 26 USC 501(c)(3), for the diagnosis and  
813 treatment of cancer or cancer-related diseases, whether or not  
814 such a facility is required to be licensed by this state, or any  
815 professional corporation a health care provider is authorized to  
816 form under the Mississippi Code of 1972, or any partnership,  
817 limited liability partnership, limited liability company, or  
818 corporation whose business is conducted principally by health care  
819 providers, or an officer, employee, partner, member, shareholder,  
820 or agent thereof acting in the course and scope of his employment.

821 (iii) "Malpractice" means any unintentional tort  
822 or any breach of contract based on health care or professional  
823 services rendered, or which should have been rendered, by a health  
824 care provider, to a patient, including failure to render services  
825 timely and the handling of a patient, including loading and  
826 unloading of a patient, and also includes all legal responsibility  
827 of a health care provider arising from acts or omissions in the  
828 training or supervision of health care providers, or from defects  
829 in blood, tissue, transplants, drugs and medicines, or from

830 defects in or failures of prosthetic devices, implanted in or used  
831 on or in the person of a patient.

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

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

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

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

848 (ii) Each defendant shall file a written answer  
849 within thirty (30) days of service of the request. If the  
850 defendant fails to file an answer as required, the board shall  
851 notify the defendant of the obligation to file and penalty for  
852 failure to file; notice shall be by certified or registered United  
853 States mail. If the defendant has not filed within thirty (30)  
854 days of the receipt of the notice specified in this subparagraph  
855 (ii), the request for review shall be dismissed; the panel, if  
856 formed, shall be dissolved, and the plaintiff shall be allowed to  
857 proceed in court upon the complaint filed.

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

859 (a) During the pendency of proceedings under this  
860 section, a health care provider against whom a claim has been  
861 filed may raise any exception or defenses available pursuant to  
862 Mississippi law, whether a procedural, statute of limitations or

863 other exception or defense, at any time without need for  
864 completion of the review process by the medical review panel.

865 (b) If the court finds for the party raising the  
866 exception or defense, that party shall be dismissed. If there are  
867 no defendants remaining, the panel, if established, shall be  
868 dissolved.

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

870 (a) The medical review panel shall consist of three (3)  
871 physicians who each hold an unlimited license to practice medicine  
872 in Mississippi and one (1) attorney who shall be the nonvoting  
873 chair of the panel. The parties may agree on the attorney member  
874 of the medical review panel within thirty (30) days after the  
875 filing of the answer; if no agreement can be reached, then the  
876 attorney member of the medical review panel shall be selected as  
877 follows:

878 (i) The board shall draw five (5) names at random  
879 from the list of attorneys maintained by the board who have  
880 medical malpractice experience. The names of judges, magistrates,  
881 district attorneys and assistant district attorneys shall be  
882 excluded if drawn and new names drawn in their place. After  
883 selection of the attorney names, the board shall notify the  
884 parties of the attorney names from which the parties, within five  
885 (5) days, may choose the attorney member of the panel. If no  
886 agreement can be reached within five (5) days, the parties shall  
887 immediately initiate a procedure of selecting the attorney by each  
888 striking two (2) names alternately, with the plaintiff striking  
889 first and so advising the defendant of the name of the attorney so  
890 stricken; thereafter, the defendant and the plaintiff shall  
891 alternately strike until both sides have stricken two (2) names  
892 and the remaining name shall be the attorney member of the panel.  
893 If either the plaintiff or defendant fails to strike, the board  
894 shall strike for that party within five (5) additional days.

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

898                   (b) The attorney shall act as chairman of the panel and  
899 shall have no vote. The chairman shall preside at panel meetings,  
900 advise the panel as to questions of law, and shall prepare the  
901 opinion of the panel as required in subsection (7) of this  
902 section. It is the duty of the chairman to expedite the selection  
903 of the other panel members, to convene the panel and expedite the  
904 panel's review of the proposed complaint. The attorney chairman  
905 shall establish, by order, a reasonable schedule for submission of  
906 evidence to the medical review panel, but must allow sufficient  
907 time for the parties to make full and adequate presentation of  
908 related facts and authorities within one hundred twenty (120) days  
909 following selection of the panel.

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

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

917                   (ii) Each party to the action shall have the right  
918 to select one (1) physician and upon selection the physician shall  
919 be required to serve.

920                   (iii) When there are multiple plaintiffs or  
921 defendants, there shall be only one (1) physician selected per  
922 side. The plaintiff, whether single or multiple, shall have the  
923 right to select one (1) physician, and the defendant, whether  
924 single or multiple, shall have the right to select one (1)  
925 physician. The two (2) physicians so chosen shall jointly select  
926 the third physician.

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

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

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

936 (vii) The physician selection process shall be  
937 completed within thirty (30) days of the selection of the attorney  
938 chairman.

939 (d) Attorneys and physicians selected shall disclose  
940 any financial, employment, or personal or family ties to any party  
941 or attorney for a party. Any conflict that cannot be resolved  
942 shall be decided by the court upon the motion of any party.

943 (4) **Evidence.**

944 (a) The evidence to be considered by the medical review  
945 panel shall be promptly submitted by the respective parties in  
946 written form only.

947 (b) The evidence may consist of:

948 (i) Medical records;

949 (ii) Sworn statements;

950 (iii) Expert reports signed by experts;

951 (iv) Deposition transcripts;

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

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

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

960 (e) The plaintiff must sign a valid authorization  
961 allowing defendants to obtain the plaintiff's medical records.  
962 The defendant shall treat all medical records in a confidential  
963 manner and shall not disclose the contents of the records to  
964 anyone other than the panel or other experts; all other experts  
965 must treat the plaintiff's records as confidential.

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

968 (5) **Hearings.** (a) After submission of all evidence and  
969 upon ten (10) days' notice to the other side, either party or the  
970 panel shall have the right to convene the panel at a time and  
971 place agreeable to the members of the panel; each party is  
972 entitled to request only one (1) hearing. The panel may hold as  
973 many hearings as it chooses. The purpose of a hearing is to ask  
974 questions as to additional evidence needed and to afford an  
975 opportunity to make oral presentation of the facts. The chairman  
976 of the panel shall preside at all hearings, which shall be  
977 informal.

978 (b) The following are locations where hearings may be  
979 held:

980 (i) At a courthouse or other available public  
981 building in the county where the act or omission is alleged to  
982 have occurred.

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

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

988 (6) **Panel deliberations and decision.** After receiving all  
989 evidence from the parties, the panel shall convene to discuss the  
990 evidence presented not less than one (1) time, and, not later than  
991 sixty (60) days after receiving all evidence from the parties,  
992 shall render a written decision signed by the panelists, together

993 with written reasons for their conclusions, as follows:

994 (a) There was a breach of the appropriate standard of  
995 care;

996 (b) There was not a breach of the appropriate standard  
997 of care; or

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

1000 (7) **Form of decision.** The decision reached by the medical  
1001 review panel shall be in writing, shall state the facts upon which  
1002 it is based, shall be of public record, and shall be admissible as  
1003 evidence in the civil case filed.

1004 (8) **Panelist immunity.** A panelist shall have absolute  
1005 immunity from civil liability for all communications, findings,  
1006 opinions and conclusions made in the course and scope of duties  
1007 prescribed by this section.

1008 (9) **Panelist compensation.**

1009 (a) (i) Each physician member of the medical review  
1010 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for  
1011 all work performed as a member of the panel, and in addition  
1012 thereto, per diem as provided in Section 25-3-69, Mississippi Code  
1013 of 1972, and travel expenses as would be calculated for a state  
1014 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1015 (ii) The attorney chairman of the medical review  
1016 panel shall be paid at the rate of One Hundred Fifty Dollars  
1017 (\$150.00) per hour, not to exceed a total of Three Thousand  
1018 Dollars (\$3,000.00), for all work performed as a member of the  
1019 panel, and in addition thereto, per diem as provided in Section  
1020 25-3-69, Mississippi Code of 1972, and travel expenses as would be  
1021 calculated for a state employee pursuant to Section 25-3-41,  
1022 Mississippi Code of 1972.

1023 (b) The costs of the medical review panel shall be  
1024 split between the parties. The panel members shall by affidavit  
1025 request the payment due under this subsection (9) from the board,

1026 which in turn shall bill the parties for the proportionate share  
1027 of each party.

1028       (10) **Delivery and effect of decision.** The chairman shall  
1029 submit a copy of the panel's report to the board and all parties  
1030 and attorneys by registered or certified mail within five (5) days  
1031 after the panel renders its opinion. The panel's report shall be  
1032 of public record.

1033       (11) **Allocation of attorney fees and expenses.**

1034           (a) If the decision of the panel finds for the  
1035 defendant and the defendant prevails in court, the plaintiff shall  
1036 pay reasonable attorney fees and expenses of the defendant to be  
1037 determined by the court.

1038           (b) If the decision of the panel finds for the  
1039 plaintiff:

1040               (i) The plaintiff may submit a written settlement  
1041 offer for a sum certain to the defendant. If the defendant  
1042 rejects the settlement offer, the plaintiff prevails in court, and  
1043 the judgment is equal to or greater than the settlement offer, the  
1044 defendant shall pay reasonable attorney fees and expenses of the  
1045 plaintiff to be determined by the court.

1046               (ii) The defendant also may submit a written  
1047 settlement offer for a sum certain to the plaintiff. If the  
1048 plaintiff rejects the settlement offer and the defendant prevails  
1049 in the subsequent court action, or the plaintiff prevails but the  
1050 judgment is less than the defendant's settlement offer, the  
1051 plaintiff shall pay reasonable attorney fees and expenses of the  
1052 defendant to be determined by the court.

1053       **SECTION 20.** Section 11-46-19, Mississippi Code of 1972, is  
1054 amended as follows:

1055       **[Until July 1, 2005, this section shall read as follows:]**

1056       11-46-19. (1) The board shall have the following powers:

1057           (a) To provide oversight over the Tort Claims Fund;



1058                   (b) To approve any award made from the Tort Claims  
1059 Fund;

1060                   (c) To pay all necessary expenses attributable to the  
1061 operation of the Tort Claims Fund from such fund;

1062                   (d) To assign litigated claims against governmental  
1063 entities other than political subdivisions to competent attorneys  
1064 unless such governmental entity has a staff attorney who is  
1065 competent to represent the governmental entity and is approved by  
1066 the board; the board shall give primary consideration to attorneys  
1067 practicing in the jurisdiction where the claim arose in assigning  
1068 cases; attorneys hired to represent a governmental entity other  
1069 than a political subdivision shall be paid according to the  
1070 department fee schedule;

1071                   (e) To approve all claimants' attorney fees in claims  
1072 against the state;

1073                   (f) To employ on a full-time basis a staff attorney who  
1074 shall possess the minimum qualifications required to be a member  
1075 of The Mississippi Bar, and such other staff as it may deem  
1076 necessary to carry out the purposes of this chapter; the employees  
1077 in the positions approved by the board shall be hired by the  
1078 director, shall be employees of the department, and shall be  
1079 compensated from the Tort Claims Fund;

1080                   (g) To contract with one or more reputable insurance  
1081 consulting firms as may be necessary;

1082                   (h) To purchase any policies of liability insurance and  
1083 to administer any plan of self-insurance or policies of liability  
1084 insurance required for the protection of the state against claims  
1085 and suits brought under this chapter;

1086                   (i) To expend money from the Tort Claims Fund for the  
1087 purchase of any policies of liability insurance and the payment of  
1088 any award or settlement of a claim against the state under the  
1089 provisions of this chapter or of a claim against any school  
1090 district, junior college or community college district, or state

1091 agency, arising from the operation of school buses or other  
1092 vehicles, under the provisions of Section 37-41-42;

1093 (j) To cancel, modify or replace any policy or policies  
1094 of liability insurance procured by the board;

1095 (k) To issue certificates of coverage to governmental  
1096 entities, including any political subdivision participating in any  
1097 plan of liability protection approved by the board;

1098 (l) To review and approve or reject any plan of  
1099 liability insurance or self-insurance reserves proposed or  
1100 provided by political subdivisions if such plan is intended to  
1101 serve as security for risks of claims and suits against them for  
1102 which immunity has been waived under this chapter;

1103 (m) To administer disposition of claims against the  
1104 Tort Claims Fund;

1105 (n) To withhold issuance of any warrants payable from  
1106 funds of a participating state entity should such entity fail to  
1107 make required contributions to the Tort Claims Fund in the time  
1108 and manner prescribed by the board;

1109 (o) To develop a comprehensive statewide list of  
1110 attorneys who are qualified to represent the state and any  
1111 employee thereof named as a defendant in a claim brought under  
1112 this chapter against the state or such employee;

1113 (p) To develop a schedule of fees for paying attorneys  
1114 defending claims against the state or an employee thereof;

1115 (q) To adopt and promulgate such reasonable rules and  
1116 regulations and to do and perform all such acts as are necessary  
1117 to carry out its powers and duties under this chapter;

1118 (r) To establish and assess premiums to be paid by  
1119 governmental entities required to participate in the Tort Claims  
1120 Fund;

1121 (s) To contract with a third-party administrator to  
1122 process claims against the state under this chapter;

1123 (t) To annually submit its budget request to the  
1124 Legislature as a state agency;

1125 (u) To dispose of salvage obtained in settlement or  
1126 payment of any claim at fair market value by such means and upon  
1127 such terms as the board may think best; \* \* \*

1128 (v) To administer the Medical Malpractice Insurance  
1129 Availability Plan under Section 83-48-5; and

1130 (w) To act as the board as required under Senate Bill  
1131 No. 2763, 2004 Regular Session, dealing with medical malpractice  
1132 claims as follows:

1133 (i) To accept filings under the act;

1134 (ii) To coordinate the selection of panels;

1135 (iii) To maintain lists of attorneys eligible for  
1136 appointment as attorney chairmen;

1137 (iv) To promulgate rules in reference to the  
1138 qualifications of attorneys serving as panel members;

1139 (v) To promulgate rules and regulations necessary  
1140 to implement the provisions of Section 19 of Senate Bill No. 2763,  
1141 2004 Regular Session; and

1142 (vi) To provide general administrative support.

1143 (2) Policies of liability insurance purchased for the  
1144 protection of governmental entities against claims and suits  
1145 brought under this chapter shall be purchased pursuant to the  
1146 competitive bidding procedures set forth in Section 31-7-13.

1147 (3) The department shall have the following powers and  
1148 duties:

1149 (a) To annually report to the Legislature concerning  
1150 each comprehensive plan of liability protection established  
1151 pursuant to Section 11-46-17(2). Such report shall include a  
1152 comprehensive analysis of the cost of the plan, a breakdown of the  
1153 cost to participating state entities, and such other information  
1154 as the department may deem necessary.

1155           (b) To provide the board with any staff and meeting  
1156 facilities as may be necessary to carry out the duties of the  
1157 board as provided in this chapter.

1158           (c) To submit the board's budget request for the  
1159 initial year of operation of the board in order to authorize  
1160 expenditures for the 1993-1994 fiscal year and for the  
1161 appropriation of such general funds as shall be required for the  
1162 commencement of its activities.

1163           **[From and after July 1, 2005, this section shall read as**  
1164 **follows:]**

1165           11-46-19. (1) The board shall have the following powers:

1166           (a) To provide oversight over the Tort Claims Fund;

1167           (b) To approve any award made from the Tort Claims  
1168 Fund;

1169           (c) To pay all necessary expenses attributable to the  
1170 operation of the Tort Claims Fund from such fund;

1171           (d) To assign litigated claims against governmental  
1172 entities other than political subdivisions to competent attorneys  
1173 unless such governmental entity has a staff attorney who is  
1174 competent to represent the governmental entity and is approved by  
1175 the board; the board shall give primary consideration to attorneys  
1176 practicing in the jurisdiction where the claim arose in assigning  
1177 cases; attorneys hired to represent a governmental entity other  
1178 than a political subdivision shall be paid according to the  
1179 department fee schedule;

1180           (e) To approve all claimants' attorney fees in claims  
1181 against the state;

1182           (f) To employ on a full-time basis a staff attorney who  
1183 shall possess the minimum qualifications required to be a member  
1184 of The Mississippi Bar, and such other staff as it may deem  
1185 necessary to carry out the purposes of this chapter; the employees  
1186 in the positions approved by the board shall be hired by the

1187 director, shall be employees of the department, and shall be  
1188 compensated from the Tort Claims Fund;

1189 (g) To contract with one or more reputable insurance  
1190 consulting firms as may be necessary;

1191 (h) To purchase any policies of liability insurance and  
1192 to administer any plan of self-insurance or policies of liability  
1193 insurance required for the protection of the state against claims  
1194 and suits brought under this chapter;

1195 (i) To expend money from the Tort Claims Fund for the  
1196 purchase of any policies of liability insurance and the payment of  
1197 any award or settlement of a claim against the state under the  
1198 provisions of this chapter or of a claim against any school  
1199 district, junior college or community college district, or state  
1200 agency, arising from the operation of school buses or other  
1201 vehicles, under the provisions of Section 37-41-42;

1202 (j) To cancel, modify or replace any policy or policies  
1203 of liability insurance procured by the board;

1204 (k) To issue certificates of coverage to governmental  
1205 entities, including any political subdivision participating in any  
1206 plan of liability protection approved by the board;

1207 (l) To review and approve or reject any plan of  
1208 liability insurance or self-insurance reserves proposed or  
1209 provided by political subdivisions if such plan is intended to  
1210 serve as security for risks of claims and suits against them for  
1211 which immunity has been waived under this chapter;

1212 (m) To administer disposition of claims against the  
1213 Tort Claims Fund;

1214 (n) To withhold issuance of any warrants payable from  
1215 funds of a participating state entity should such entity fail to  
1216 make required contributions to the Tort Claims Fund in the time  
1217 and manner prescribed by the board;

1218 (o) To develop a comprehensive statewide list of  
1219 attorneys who are qualified to represent the state and any

1220 employee thereof named as a defendant in a claim brought under  
1221 this chapter against the state or such employee;

1222 (p) To develop a schedule of fees for paying attorneys  
1223 defending claims against the state or an employee thereof;

1224 (q) To adopt and promulgate such reasonable rules and  
1225 regulations and to do and perform all such acts as are necessary  
1226 to carry out its powers and duties under this chapter;

1227 (r) To establish and assess premiums to be paid by  
1228 governmental entities required to participate in the Tort Claims  
1229 Fund;

1230 (s) To contract with a third-party administrator to  
1231 process claims against the state under this chapter;

1232 (t) To annually submit its budget request to the  
1233 Legislature as a state agency;

1234 (u) To dispose of salvage obtained in settlement or  
1235 payment of any claim at fair market value by such means and upon  
1236 such terms as the board may think best; and

1237 \* \* \*

1238 (v) To act as the board as required under Senate Bill  
1239 No. 2763, 2004 Regular Session, dealing with medical malpractice  
1240 claims as follows:

1241 (i) To accept filings under the act;

1242 (ii) To coordinate the selection of panels;

1243 (iii) To maintain lists of attorneys eligible for  
1244 appointment as attorney chairmen;

1245 (iv) To promulgate rules in reference to the  
1246 qualifications of attorneys; and

1247 (v) To provide general administrative support.

1248 (2) Policies of liability insurance purchased for the  
1249 protection of governmental entities against claims and suits  
1250 brought under this chapter shall be purchased pursuant to the  
1251 competitive bidding procedures set forth in Section 31-7-13.

1252           (3) The department shall have the following powers and  
1253 duties:

1254           (a) To annually report to the Legislature concerning  
1255 each comprehensive plan of liability protection established  
1256 pursuant to Section 11-46-17(2). Such report shall include a  
1257 comprehensive analysis of the cost of the plan, a breakdown of the  
1258 cost to participating state entities, and such other information  
1259 as the department may deem necessary.

1260           (b) To provide the board with any staff and meeting  
1261 facilities as may be necessary to carry out the duties of the  
1262 board as provided in this chapter.

1263           (c) To submit the board's budget request for the  
1264 initial year of operation of the board in order to authorize  
1265 expenditures for the 1993-1994 fiscal year and for the  
1266 appropriation of such general funds as shall be required for the  
1267 commencement of its activities.

1268           **SECTION 21.** If any provision of this act is held by a court  
1269 to be invalid, such invalidity shall not affect the remaining  
1270 provisions of this act, and to this end the provisions of this act  
1271 are declared severable.

1272           **SECTION 22.** This act shall take effect and be in force from  
1273 and after July 1, 2004, and Sections 1 through 7 of this act shall  
1274 apply to all causes of action filed on or after that date.