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To: Judiciary, Division A

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 PROVIDE THAT FILING FOR
 41 REVIEW SHALL TOLL THE STATUTE OF LIMITATIONS AGAINST ALL
 42 DEFENDANTS; TO ESTABLISH THE MEMBERSHIP REVIEW PANEL; TO PROVIDE
 43 WHAT EVIDENCE MAY BE CONSIDERED BY THE PANEL; TO PROVIDE THE FORM
 44 OF THE DECISION; TO PROVIDE FOR PANELIST IMMUNITY AND
 45 COMPENSATION; TO PROVIDE THAT THE LOSING PARTY SHALL PAY ATTORNEY
 46 FEES TO THE PREVAILING PARTY UNDER CERTAIN CIRCUMSTANCES; AND FOR
 47 RELATED PURPOSES.

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

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

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

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

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

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

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

79 (4) (a) If a court of this state, on written motion of a
80 party, finds that in the interest of justice and for the
81 convenience of the parties and witnesses a claim or action would

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

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

95 (ii) Availability and cost of compulsory process
96 for attendance of unwilling witnesses;

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

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

102 (v) Administrative difficulties for the forum
103 courts;

104 (vi) Existence of local interests in deciding the
105 case at home; and

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

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

115 filed in this state as necessary to effect a tolling of the
116 limitations periods in those states beginning on the date the
117 claim was filed in this state and ending on the date the claim is
118 dismissed.

119 * * *

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

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

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

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

142 * * *

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

147 (3) (a) Regardless of the number of parties against whom an
148 action is brought or the number of separate claims or actions
149 brought with respect to the same injury, for causes of action
150 filed on or after July 1, 2004, the aggregate amount recoverable
151 for noneconomic damages by a plaintiff in any claim for injury
152 shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00).

153 * * *

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

158 * * *

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

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

163 11-1-63. * * * In any action for damages caused by a product
164 except for commercial damage to the product itself:

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

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

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

175 3. The product was designed in a defective
176 manner, or

177 4. The product breached an express warranty
178 or failed to conform to other express factual representations upon

179 which the claimant justifiably relied in electing to use the
180 product; and

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

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

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

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

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

212 professional person, taking into account the characteristics of,
213 and the ordinary knowledge common to, a physician or other
214 licensed professional who prescribes the drug, device or other
215 product.

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

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

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

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

242 (ii) The product failed to function as expected
243 and there existed a feasible design alternative that would have to
244 a reasonable probability prevented the harm. A feasible design

245 alternative is a design that would have to a reasonable
246 probability prevented the harm without impairing the utility,
247 usefulness, practicality or desirability of the product to users
248 or consumers.

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

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

268 (h) In any action alleging that a product is defective
269 pursuant to paragraph (a) of this section, the seller of a product
270 other than the manufacturer shall not be liable unless the seller
271 exercised substantial control over that aspect of the design,
272 testing, manufacture, packaging or labeling of the product that
273 caused the harm for which recovery of damages is sought; or the
274 seller altered or modified the product, and the alteration or
275 modification was a substantial factor in causing the harm for
276 which recovery of damages is sought; or the seller had actual
277 knowledge of the defective condition of the product at the time he

278 supplied the product. It is the intent of this section to
279 insulate innocent sellers who are not actively negligent, but
280 instead are mere conduits of a product, from forum-driven
281 lawsuits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

355 3. In mitigation, the financial condition and
356 net worth of the defendant; and

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

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

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

376 (i) Ten Million Dollars (\$10,000,000.00) for a
377 defendant with a net worth of more than One Billion Dollars
378 (\$1,000,000,000.00);

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

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

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

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

395 (vi) Two percent (2%) of the defendant's net worth
396 for a defendant with a net worth of Fifty Million Dollars
397 (\$50,000,000.00) or less.

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

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

406 (d) The limitation on the amount of punitive damages
407 imposed by this subsection (3) shall not apply to actions brought

408 for damages or an injury resulting from an act or failure to act
409 by the defendant:

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

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

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

418 * * *

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

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

428 * * *

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

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

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

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

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

450 * * *

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

462 * * *

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

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

472 (5) In actions involving joint tort-feasors, the trier of
473 fact shall determine the percentage of fault for each party

474 alleged to be at fault without regard to whether the joint
475 tort-feasor is immune from damages. Fault allocated under this
476 subsection to an immune tort-feasor or a tort-feasor whose
477 liability is limited by law shall not be reallocated to any other
478 tort-feasor.

479 * * *

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

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

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

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

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

503 "1. Your name _____ Last _____ First _____ Middle
504 initial

505 2. Your home address _____

506 3. Your occupation _____

507 4. Your age _____
508 5. Your telephone number _____ If none, write 'None'
509 6. If you live outside the county seat, the number of miles
510 you live from the courthouse _____ miles
511 _____

512 Sign your name"

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

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

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

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

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

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

530 * * *

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

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

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

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

551 (iii) Suffer physical hardship that would result
552 in illness or disease.

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

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

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

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

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

579 * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

689 25-7-61. (1) Fees of jurors shall be payable as follows:

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

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

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

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

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

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

724 (a) The local public library;

725 (b) Local law enforcement;

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

728 (d) Any other governmental agency.

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

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

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

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

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

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

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

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

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

768 amount the juror actually receives from the employer during the
769 same time period.

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

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

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

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

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

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

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

797 **SECTION 19. Medical review panel.**

798 (1) **Claims; statute of limitations.** (a) For purposes of
799 this section, "board" means the Tort Claims Board established by
800 Section 11-46-18, Mississippi Code of 1972.

801 (b) (i) All malpractice claims against health care
802 providers, other than claims validly agreed for submission to a
803 lawfully binding arbitration procedure, shall be reviewed by a
804 medical review panel as provided in this section.

805 (ii) No action against a health care provider or
806 his insurer may be commenced in any court before the claimant's
807 proposed complaint has been presented to a medical review panel
808 established pursuant to this section.

809 (iii) The request for review of a malpractice
810 claim under this section shall be deemed filed on the date of
811 receipt of the request stamped and certified by the board or on
812 the date of mailing of the request if mailed to the board by
813 certified or registered mail.

814 (iv) By agreement of both parties, the use of the
815 medical review panel may be waived.

816 (c) (i) The filing of the request for a review of a
817 claim shall toll the statute of limitations for a period of ninety
818 (90) days from the date notification is received by the claimant
819 or his attorney of the issuance of the opinion by the medical
820 review panel; notification of the issuance of the opinion shall
821 comply with subsection (10) of this section. The filing of a
822 request for review of a claim shall serve to toll the statute of
823 limitations against all joint and several obligors, and all joint
824 tort-feasors including, but not limited to, health care providers,
825 to the same extent that the statute of limitations is tolled as to
826 the party or parties that are the subject of the request for
827 review. Filing a request for review of a malpractice claim with
828 any agency or entity other than as required by this section shall
829 not serve to toll the statute of limitations.

830 (ii) Filing a request for review initiates the
831 review process. Every request must be in writing, delivered in
832 person or by certified or registered United States mail, and
833 include as an exhibit a complaint conforming to the Rules of Civil

834 Procedure setting forth in complete specificity the grounds and
835 nature of the medical malpractice claim. The claimant shall serve
836 a copy of the complete request on each proposed defendant.

837 (iii) Each defendant shall file a written answer
838 to the complaint attached to the request for review within thirty
839 (30) days of service of the request with attached complaint. If
840 the defendant fails to file an answer as required, the board shall
841 notify the defendant of the obligation to file and penalty for
842 failure to file; notice shall be by certified or registered United
843 States mail. If the defendant has not filed within thirty (30)
844 days of the receipt of the notice specified in this item (iii),
845 the request for review shall be dismissed; the panel, if formed,
846 shall be dissolved, and the claimant shall be allowed to proceed
847 in court by filing a complaint in a court of competent
848 jurisdiction.

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

850 (a) During the pendency of proceedings under this
851 section, a health care provider against whom a claim has been
852 filed may raise any exception or defenses available pursuant to
853 Mississippi law, whether a procedural, statute of limitations or
854 other exception or defense, in a court of competent jurisdiction
855 and proper venue at any time without need for completion of the
856 review process by the medical review panel.

857 (b) If the court finds for the party raising the
858 exception or defense, that party shall be dismissed. If there are
859 no defendants remaining, the panel, if established, shall be
860 dissolved.

861 (c) Ninety (90) days after the notification to all
862 parties by certified mail by the attorney chairman or board of the
863 dissolution of the medical review panel, the tolling of the
864 statute of limitations with respect to a defendant shall cease.

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

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

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

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

894 (b) The attorney shall act as chairman of the panel and
895 shall have no vote. The chairman shall preside at panel meetings,
896 advise the panel as to questions of law, and shall prepare the
897 opinion of the panel as required in subsection (7) of this
898 section. It is the duty of the chairman to expedite the selection

899 of the other panel members, to convene the panel and expedite the
900 panel's review of the proposed complaint. The attorney chairman
901 shall establish, by order, a reasonable schedule for submission of
902 evidence to the medical review panel, but must allow sufficient
903 time for the parties to make full and adequate presentation of
904 related facts and authorities within one hundred twenty (120) days
905 following selection of the panel.

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

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

913 (ii) Each party to the action shall have the right
914 to select one (1) physician and upon selection the physician shall
915 be required to serve.

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

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

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

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

932 (vii) The physician selection process shall be
933 completed within thirty (30) days of the selection of the attorney
934 chairman.

935 (d) Attorneys and physicians selected shall disclose
936 any financial, employment, or personal or family ties to any party
937 or attorney for a party. Any conflict that cannot be resolved
938 shall be decided by a court of competent jurisdiction upon motion
939 by any party.

940 (4) **Evidence.**

941 (a) The evidence to be considered by the medical review
942 panel shall be promptly submitted by the respective parties in
943 written form only.

944 (b) The evidence may consist of:

945 (i) Medical records;

946 (ii) Sworn statements;

947 (iii) Expert reports signed by experts;

948 (iv) Deposition transcripts;

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

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

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

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

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

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

975 (b) The following are locations where hearings may be
976 held:

977 (i) At a courthouse or other available public
978 building in the county where the act or omission is alleged to
979 have occurred.

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

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

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

991 (a) There was a breach of the appropriate standard of
992 care;

993 (b) There was not a breach of the appropriate standard
994 of care; or

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

997 (7) **Form of decision.** The decision reached by the medical
998 review panel shall be in writing, shall state the facts upon which
999 it is based, shall be of public record, and shall be admissible as
1000 evidence in any action subsequently brought by the claimant in a
1001 court of law.

1002 (8) **Panelist immunity.** A panelist shall have absolute
1003 immunity from civil liability for all communications, findings,
1004 opinions and conclusions made in the course and scope of duties
1005 prescribed by this section.

1006 (9) **Panelist compensation.**

1007 (a) (i) Each physician member of the medical review
1008 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for
1009 all work performed as a member of the panel, and in addition
1010 thereto, per diem as provided in Section 25-3-69, Mississippi Code
1011 of 1972, and travel expenses as would be calculated for a state
1012 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1013 (ii) The attorney chairman of the medical review
1014 panel shall be paid at the rate of One Hundred Fifty Dollars
1015 (\$150.00) per hour, not to exceed a total of Three Thousand
1016 Dollars (\$3,000.00), for all work performed as a member of the
1017 panel, and in addition thereto, per diem as provided in Section
1018 25-3-69, Mississippi Code of 1972, and travel expenses as would be
1019 calculated for a state employee pursuant to Section 25-3-41,
1020 Mississippi Code of 1972.

1021 (b) The costs of the medical review panel shall be
1022 split between the parties. The panel members shall by affidavit
1023 request the payment due under this subsection (9) from the board,
1024 which in turn shall bill the parties for the proportionate share
1025 of each party.

1026 (10) **Delivery and effect of decision.** The chairman shall
1027 submit a copy of the panel's report to the board and all parties
1028 and attorneys by registered or certified mail within five (5) days

1029 after the panel renders its opinion. The panel's report shall be
1030 of public record.

1031 (11) **Allocation of costs of court.**

1032 (a) If the decision of the panel finds for the
1033 defendant and the plaintiff elects to go forward, in the event the
1034 defendant prevails in the subsequent court action, the plaintiff
1035 shall pay reasonable attorney fees and expenses of the defendant;
1036 the reasonable attorney fees shall be calculated at a reasonable
1037 hourly rate for a reasonable number of hours.

1038 (b) If the decision of the panel finds for the
1039 plaintiff, the plaintiff may submit a written settlement offer for
1040 a sum certain to the defendant. If the defendant rejects the
1041 settlement offer and the plaintiff elects to go forward, if the
1042 plaintiff prevails in the subsequent court action and the judgment
1043 is equal to or greater than the settlement offer, the defendant
1044 shall pay reasonable attorney fees and expenses of the plaintiff;
1045 the reasonable attorney fees shall be calculated at a reasonable
1046 hourly rate for a reasonable number of hours, and the defendant
1047 shall not be responsible for payment of any attorney fees
1048 calculated on any contingent fee arrangement.

1049 **SECTION 20.** Section 11-46-19, Mississippi Code of 1972, is
1050 amended as follows:

1051 **[Until July 1, 2005, this section shall read as follows:]**

1052 11-46-19. (1) The board shall have the following powers:

1053 (a) To provide oversight over the Tort Claims Fund;

1054 (b) To approve any award made from the Tort Claims
1055 Fund;

1056 (c) To pay all necessary expenses attributable to the
1057 operation of the Tort Claims Fund from such fund;

1058 (d) To assign litigated claims against governmental
1059 entities other than political subdivisions to competent attorneys
1060 unless such governmental entity has a staff attorney who is
1061 competent to represent the governmental entity and is approved by

1062 the board; the board shall give primary consideration to attorneys
1063 practicing in the jurisdiction where the claim arose in assigning
1064 cases; attorneys hired to represent a governmental entity other
1065 than a political subdivision shall be paid according to the
1066 department fee schedule;

1067 (e) To approve all claimants' attorney fees in claims
1068 against the state;

1069 (f) To employ on a full-time basis a staff attorney who
1070 shall possess the minimum qualifications required to be a member
1071 of The Mississippi Bar, and such other staff as it may deem
1072 necessary to carry out the purposes of this chapter; the employees
1073 in the positions approved by the board shall be hired by the
1074 director, shall be employees of the department, and shall be
1075 compensated from the Tort Claims Fund;

1076 (g) To contract with one or more reputable insurance
1077 consulting firms as may be necessary;

1078 (h) To purchase any policies of liability insurance and
1079 to administer any plan of self-insurance or policies of liability
1080 insurance required for the protection of the state against claims
1081 and suits brought under this chapter;

1082 (i) To expend money from the Tort Claims Fund for the
1083 purchase of any policies of liability insurance and the payment of
1084 any award or settlement of a claim against the state under the
1085 provisions of this chapter or of a claim against any school
1086 district, junior college or community college district, or state
1087 agency, arising from the operation of school buses or other
1088 vehicles, under the provisions of Section 37-41-42;

1089 (j) To cancel, modify or replace any policy or policies
1090 of liability insurance procured by the board;

1091 (k) To issue certificates of coverage to governmental
1092 entities, including any political subdivision participating in any
1093 plan of liability protection approved by the board;

1094 (1) To review and approve or reject any plan of
1095 liability insurance or self-insurance reserves proposed or
1096 provided by political subdivisions if such plan is intended to
1097 serve as security for risks of claims and suits against them for
1098 which immunity has been waived under this chapter;

1099 (m) To administer disposition of claims against the
1100 Tort Claims Fund;

1101 (n) To withhold issuance of any warrants payable from
1102 funds of a participating state entity should such entity fail to
1103 make required contributions to the Tort Claims Fund in the time
1104 and manner prescribed by the board;

1105 (o) To develop a comprehensive statewide list of
1106 attorneys who are qualified to represent the state and any
1107 employee thereof named as a defendant in a claim brought under
1108 this chapter against the state or such employee;

1109 (p) To develop a schedule of fees for paying attorneys
1110 defending claims against the state or an employee thereof;

1111 (q) To adopt and promulgate such reasonable rules and
1112 regulations and to do and perform all such acts as are necessary
1113 to carry out its powers and duties under this chapter;

1114 (r) To establish and assess premiums to be paid by
1115 governmental entities required to participate in the Tort Claims
1116 Fund;

1117 (s) To contract with a third-party administrator to
1118 process claims against the state under this chapter;

1119 (t) To annually submit its budget request to the
1120 Legislature as a state agency;

1121 (u) To dispose of salvage obtained in settlement or
1122 payment of any claim at fair market value by such means and upon
1123 such terms as the board may think best; * * *

1124 (v) To administer the Medical Malpractice Insurance
1125 Availability Plan under Section 83-48-5; and

1126 (w) To act as the board as required under Senate Bill
1127 No. 2763, 2004 Regular Session, dealing with medical malpractice
1128 claims as follows:
1129 (i) To accept filings under the act;
1130 (ii) To coordinate the selection of panels;
1131 (iii) To maintain lists of attorneys eligible for
1132 appointment as attorney chairmen;
1133 (iv) To promulgate rules in reference to the
1134 qualifications of attorneys serving as panel members;
1135 (v) To promulgate rules and regulations necessary
1136 to implement the provisions of Section 19 of Senate Bill No. 2763,
1137 2004 Regular Session; and

1138 (vi) To provide general administrative support.

1139 (2) Policies of liability insurance purchased for the
1140 protection of governmental entities against claims and suits
1141 brought under this chapter shall be purchased pursuant to the
1142 competitive bidding procedures set forth in Section 31-7-13.

1143 (3) The department shall have the following powers and
1144 duties:

1145 (a) To annually report to the Legislature concerning
1146 each comprehensive plan of liability protection established
1147 pursuant to Section 11-46-17(2). Such report shall include a
1148 comprehensive analysis of the cost of the plan, a breakdown of the
1149 cost to participating state entities, and such other information
1150 as the department may deem necessary.

1151 (b) To provide the board with any staff and meeting
1152 facilities as may be necessary to carry out the duties of the
1153 board as provided in this chapter.

1154 (c) To submit the board's budget request for the
1155 initial year of operation of the board in order to authorize
1156 expenditures for the 1993-1994 fiscal year and for the
1157 appropriation of such general funds as shall be required for the
1158 commencement of its activities.

1159 **[From and after July 1, 2005, this section shall read as**
1160 **follows:]**

1161 11-46-19. (1) The board shall have the following powers:

1162 (a) To provide oversight over the Tort Claims Fund;

1163 (b) To approve any award made from the Tort Claims
1164 Fund;

1165 (c) To pay all necessary expenses attributable to the
1166 operation of the Tort Claims Fund from such fund;

1167 (d) To assign litigated claims against governmental
1168 entities other than political subdivisions to competent attorneys
1169 unless such governmental entity has a staff attorney who is
1170 competent to represent the governmental entity and is approved by
1171 the board; the board shall give primary consideration to attorneys
1172 practicing in the jurisdiction where the claim arose in assigning
1173 cases; attorneys hired to represent a governmental entity other
1174 than a political subdivision shall be paid according to the
1175 department fee schedule;

1176 (e) To approve all claimants' attorney fees in claims
1177 against the state;

1178 (f) To employ on a full-time basis a staff attorney who
1179 shall possess the minimum qualifications required to be a member
1180 of The Mississippi Bar, and such other staff as it may deem
1181 necessary to carry out the purposes of this chapter; the employees
1182 in the positions approved by the board shall be hired by the
1183 director, shall be employees of the department, and shall be
1184 compensated from the Tort Claims Fund;

1185 (g) To contract with one or more reputable insurance
1186 consulting firms as may be necessary;

1187 (h) To purchase any policies of liability insurance and
1188 to administer any plan of self-insurance or policies of liability
1189 insurance required for the protection of the state against claims
1190 and suits brought under this chapter;

1191 (i) To expend money from the Tort Claims Fund for the
1192 purchase of any policies of liability insurance and the payment of
1193 any award or settlement of a claim against the state under the
1194 provisions of this chapter or of a claim against any school
1195 district, junior college or community college district, or state
1196 agency, arising from the operation of school buses or other
1197 vehicles, under the provisions of Section 37-41-42;

1198 (j) To cancel, modify or replace any policy or policies
1199 of liability insurance procured by the board;

1200 (k) To issue certificates of coverage to governmental
1201 entities, including any political subdivision participating in any
1202 plan of liability protection approved by the board;

1203 (l) To review and approve or reject any plan of
1204 liability insurance or self-insurance reserves proposed or
1205 provided by political subdivisions if such plan is intended to
1206 serve as security for risks of claims and suits against them for
1207 which immunity has been waived under this chapter;

1208 (m) To administer disposition of claims against the
1209 Tort Claims Fund;

1210 (n) To withhold issuance of any warrants payable from
1211 funds of a participating state entity should such entity fail to
1212 make required contributions to the Tort Claims Fund in the time
1213 and manner prescribed by the board;

1214 (o) To develop a comprehensive statewide list of
1215 attorneys who are qualified to represent the state and any
1216 employee thereof named as a defendant in a claim brought under
1217 this chapter against the state or such employee;

1218 (p) To develop a schedule of fees for paying attorneys
1219 defending claims against the state or an employee thereof;

1220 (q) To adopt and promulgate such reasonable rules and
1221 regulations and to do and perform all such acts as are necessary
1222 to carry out its powers and duties under this chapter;

1223 (r) To establish and assess premiums to be paid by
1224 governmental entities required to participate in the Tort Claims
1225 Fund;

1226 (s) To contract with a third-party administrator to
1227 process claims against the state under this chapter;

1228 (t) To annually submit its budget request to the
1229 Legislature as a state agency;

1230 (u) To dispose of salvage obtained in settlement or
1231 payment of any claim at fair market value by such means and upon
1232 such terms as the board may think best; and

1233 * * *

1234 (v) To act as the board as required under Senate Bill
1235 No. 2763, 2004 Regular Session, dealing with medical malpractice
1236 claims as follows:

1237 (i) To accept filings under the act;

1238 (ii) To coordinate the selection of panels;

1239 (iii) To maintain lists of attorneys eligible for
1240 appointment as attorney chairmen;

1241 (iv) To promulgate rules in reference to the
1242 qualifications of attorneys; and

1243 (v) To provide general administrative support.

1244 (2) Policies of liability insurance purchased for the
1245 protection of governmental entities against claims and suits
1246 brought under this chapter shall be purchased pursuant to the
1247 competitive bidding procedures set forth in Section 31-7-13.

1248 (3) The department shall have the following powers and
1249 duties:

1250 (a) To annually report to the Legislature concerning
1251 each comprehensive plan of liability protection established
1252 pursuant to Section 11-46-17(2). Such report shall include a
1253 comprehensive analysis of the cost of the plan, a breakdown of the
1254 cost to participating state entities, and such other information
1255 as the department may deem necessary.

1256 (b) To provide the board with any staff and meeting
1257 facilities as may be necessary to carry out the duties of the
1258 board as provided in this chapter.

1259 (c) To submit the board's budget request for the
1260 initial year of operation of the board in order to authorize
1261 expenditures for the 1993-1994 fiscal year and for the
1262 appropriation of such general funds as shall be required for the
1263 commencement of its activities.

1264 **SECTION 21.** If any provision of this act is held by a court
1265 to be invalid, such invalidity shall not affect the remaining
1266 provisions of this act, and to this end the provisions of this act
1267 are declared severable.

1268 **SECTION 22.** This act shall take effect and be in force from
1269 and after July 1, 2004, and Sections 1 through 7 of this act shall
1270 apply to all causes of action filed on or after that date.