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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.