

By: Representatives To: Judiciary A
 Simpson, Akins, Aldridge,
 Arinder, Baker (74th), Baker
 (8th), Barnett, Beckett,
 Bentz, Bondurant, Bounds,
 Capps, Carlton, Chism, Davis, Denny, Ellington, Fillingane,
 Formby, Frierson, Guice, Gunn, Hamilton (109th), Hamilton (6th),
 Horne, Howell, Hudson, Ishee, Janus, Jennings, Lott, Martinson,
 Masterson, Mayhall, McBride, Mims, Moore, Nicholson, Parker,
 Patterson, Read, Reed, Robinson (84th), Rogers (14th), Rogers
 (61st), Rotenberry, Shows, Smith (39th), Smith (59th), Snowden,
 Staples, Stevens, Turner, Upshaw, Vince, Weathersby, Wells-Smith,
 Woods, Zuber, Reeves

HOUSE BILL NO. 3

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 REVISE THE LIMITATION ON
 4 NONECONOMIC DAMAGES IN MALPRACTICE ACTIONS AND TO PROVIDE
 5 LIMITATIONS ON NONECONOMIC DAMAGES IN ALL OTHER CIVIL ACTIONS; TO
 6 AMEND SECTION 11-1-63, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A
 7 PRODUCT SELLER OTHER THAN A MANUFACTURER SHALL NOT BE LIABLE FOR A
 8 LATENT DEFECT IF THE SELLER IS A MERE CONDUIT WHO PURCHASED THE
 9 PRODUCT FROM A REPUTABLE MANUFACTURER; TO AMEND SECTION 11-1-65,
 10 MISSISSIPPI CODE OF 1972, TO PROHIBIT MULTIPLE PUNITIVE DAMAGE
 11 AWARDS FOR THE SAME CONDUCT OF A DEFENDANT EXCEPT IN CERTAIN
 12 CASES, TO PROHIBIT PUNITIVE DAMAGES AGAINST A DEFENDANT FOR ANY
 13 REGULATED ACTIVITY CONDUCTED IN COMPLIANCE WITH FEDERAL AND STATE
 14 REGULATIONS, AND TO REVISE THE MAXIMUM AMOUNT OF PUNITIVE DAMAGE
 15 AWARDS; TO AMEND SECTION 11-1-66, MISSISSIPPI CODE OF 1972, TO
 16 REVISE THE IMMUNITY OF PREMISES OWNERS FROM CIVIL LIABILITY; TO
 17 AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE THE
 18 LIMITATION OF JOINT AND SEVERAL LIABILITY FOR DAMAGES CAUSED BY
 19 TWO OR MORE PERSONS; TO REPEAL SECTION 11-1-64, MISSISSIPPI CODE
 20 OF 1972, WHICH PROVIDES THE PROCEDURE FOR DISMISSING A DEFENDANT
 21 WHOSE LIABILITY IS BASED SOLELY ON HIS STATUS AS A SELLER IN THE
 22 STREAM OF COMMERCE; TO AMEND SECTION 13-5-1, MISSISSIPPI CODE OF
 23 1972, TO ELIMINATE CERTAIN JUROR DISQUALIFICATIONS; TO AMEND
 24 SECTION 13-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURORS
 25 CAN ONLY BE EXCUSED FROM SERVICE FOR ILLNESS OR UNDUE HARDSHIP; TO
 26 CODIFY SECTION 13-5-24, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
 27 JURORS CAN POSTPONE JURY SERVICE ONE TIME ONLY; TO AMEND SECTION
 28 13-5-25, MISSISSIPPI CODE OF 1972, TO LIMIT THE FREQUENCY OF JURY
 29 SERVICE; TO AMEND SECTION 13-5-28, MISSISSIPPI CODE OF 1972, TO
 30 REQUIRE NOTICE OF JURY SERVICE EXEMPTION ENTITLEMENT TO BE
 31 INCLUDED IN JUROR SUMMONSES; TO AMEND SECTION 13-5-34, MISSISSIPPI
 32 CODE OF 1972, TO REVISE THE PUNISHMENT FOR FAILURE TO APPEAR FOR
 33 JURY SERVICE; TO CODIFY SECTION 13-5-99, MISSISSIPPI CODE OF 1972,
 34 TO PROVIDE EMPLOYMENT PROTECTIONS FOR JURORS; TO AMEND SECTION
 35 25-7-61, MISSISSIPPI CODE OF 1972, TO CREATE A LENGTHY TRIAL FUND;
 36 TO AMEND SECTION 33-1-5, MISSISSIPPI CODE OF 1972, TO ELIMINATE
 37 CERTAIN JUROR EXEMPTIONS; TO REPEAL SECTIONS 41-17-7 AND 47-5-55,
 38 MISSISSIPPI CODE OF 1972, WHICH PROVIDE CERTAIN EXEMPTIONS FROM
 39 JURY SERVICE; TO PROVIDE THAT ALL MALPRACTICE CLAIMS SHALL BE
 40 REVIEWED BY A MEDICAL REVIEW PANEL; TO ALLOW PARTIES TO MUTUALLY
 41 AGREE TO OPT OUT OF THIS REQUIREMENT; TO ESTABLISH THE MEMBERSHIP
 42 REVIEW PANEL; TO PROVIDE WHAT EVIDENCE MAY BE CONSIDERED BY THE
 43 PANEL; TO PROVIDE THE FORM OF THE DECISION; TO PROVIDE FOR
 44 PANELIST IMMUNITY AND COMPENSATION; TO PROVIDE THAT THE LOSING
 45 PARTY SHALL PAY ATTORNEY FEES TO THE PREVAILING PARTY UNDER
 46 CERTAIN CIRCUMSTANCES; TO AMEND SECTION 11-46-19, MISSISSIPPI CODE
 47 OF 1972, IN CONFORMITY THERETO; AND FOR 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 **SECTION 2.** Section 11-1-60, Mississippi Code of 1972, is
120 amended as follows:

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

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

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

141 * * *

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

146 (3) (a) Regardless of the number of parties against whom an
147 action is brought or the number of separate claims or actions

148 brought with respect to the same injury, for causes of action
149 filed on or after July 1, 2004, for injury based on malpractice or
150 breach of standard of care against a provider of health care,
151 including institutions for the aged or infirm, the aggregate
152 amount recoverable for noneconomic damages by a plaintiff in any
153 claim for injury shall not exceed Five Hundred Thousand Dollars
154 (\$500,000.00).

155 (b) The jury shall not be advised of the limitations
156 imposed by this subsection (3), and the judge shall appropriately
157 reduce any award of noneconomic damages that exceeds the
158 applicable limitation.

159 (4) (a) Regardless of the number of parties against whom an
160 action is brought or the number of separate claims or actions
161 brought with respect to the same injury, for causes of action
162 filed on or after July 1, 2004, other than the actions described
163 in subsection (3), the aggregate amount recoverable for
164 noneconomic damages by a plaintiff in any claim for injury shall
165 not exceed five (5) times the amount of reasonable and necessary
166 medical expenses proven, or Five Hundred Thousand Dollars
167 (\$500,000.00), whichever is greater; however, in no event shall
168 the amount recoverable for noneconomic damages exceed One Million
169 Dollars (\$1,000,000.00).

170 (b) The jury shall not be advised of the limitations
171 imposed by this subsection (4), and the judge shall appropriately
172 reduce any award of noneconomic damages that exceeds the
173 applicable limitation.

174 (5) Nothing in this section shall be construed to impose a
175 limitation on * * * actual economic damages.

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

178 11-1-63. * * * In any action for damages caused by a product
179 except for commercial damage to the product itself:

180 (a) The manufacturer or seller of the product shall not
181 be liable if the claimant does not prove by the preponderance of
182 the evidence that at the time the product left the control of the
183 manufacturer or seller:

184 (i) 1. The product was defective because it
185 deviated in a material way from the manufacturer's specifications
186 or from otherwise identical units manufactured to the same
187 manufacturing specifications, or

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

190 3. The product was designed in a defective
191 manner, or

192 4. The product breached an express warranty
193 or failed to conform to other express factual representations upon
194 which the claimant justifiably relied in electing to use the
195 product; and

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

198 (iii) The defective and unreasonably dangerous
199 condition of the product proximately caused the damages for which
200 recovery is sought.

201 (b) A product is not defective in design or formulation
202 if the harm for which the claimant seeks to recover compensatory
203 damages was caused by an inherent characteristic of the product
204 which is a generic aspect of the product that cannot be eliminated
205 without substantially compromising the product's usefulness or
206 desirability and which is recognized by the ordinary person with
207 the ordinary knowledge common to the community.

208 (c) (i) In any action alleging that a product is
209 defective because it failed to contain adequate warnings or
210 instructions pursuant to paragraph (a)(i)2 of this section, the
211 manufacturer or seller shall not be liable if the claimant does
212 not prove by the preponderance of the evidence that at the time

213 the product left the control of the manufacturer or seller, the
214 manufacturer or seller knew or in light of reasonably available
215 knowledge should have known about the danger that caused the
216 damage for which recovery is sought and that the ordinary user or
217 consumer would not realize its dangerous condition.

218 (ii) An adequate product warning or instruction is
219 one that a reasonably prudent person in the same or similar
220 circumstances would have provided with respect to the danger and
221 that communicates sufficient information on the dangers and safe
222 use of the product, taking into account the characteristics of,
223 and the ordinary knowledge common to an ordinary consumer who
224 purchases the product; or in the case of a prescription drug,
225 medical device or other product that is intended to be used only
226 under the supervision of a physician or other licensed
227 professional person, taking into account the characteristics of,
228 and the ordinary knowledge common to, a physician or other
229 licensed professional who prescribes the drug, device or other
230 product.

231 (d) In any action alleging that a product is defective
232 pursuant to paragraph (a) of this section, the manufacturer or
233 seller shall not be liable if the claimant (i) had knowledge of a
234 condition of the product that was inconsistent with his safety;
235 (ii) appreciated the danger in the condition; and (iii)
236 deliberately and voluntarily chose to expose himself to the danger
237 in such a manner to register assent on the continuance of the
238 dangerous condition.

239 (e) In any action alleging that a product is defective
240 pursuant to paragraph (a)(i)2 of this section, the manufacturer or
241 seller shall not be liable if the danger posed by the product is
242 known or is open and obvious to the user or consumer of the
243 product, or should have been known or open and obvious to the user
244 or consumer of the product, taking into account the

245 characteristics of, and the ordinary knowledge common to, the
246 persons who ordinarily use or consume the product.

247 (f) In any action alleging that a product is defective
248 because of its design pursuant to paragraph (a)(i)3 of this
249 section, the manufacturer or product seller shall not be liable if
250 the claimant does not prove by the preponderance of the evidence
251 that at the time the product left the control of the manufacturer
252 or seller:

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

257 (ii) The product failed to function as expected
258 and there existed a feasible design alternative that would have to
259 a reasonable probability prevented the harm. A feasible design
260 alternative is a design that would have to a reasonable
261 probability prevented the harm without impairing the utility,
262 usefulness, practicality or desirability of the product to users
263 or consumers.

264 (g) (i) The manufacturer of a product who is found
265 liable for a defective product pursuant to paragraph (a) shall
266 indemnify a product seller for the costs of litigation, any
267 reasonable expenses, reasonable attorney's fees and any damages
268 awarded by the trier of fact unless the seller exercised
269 substantial control over that aspect of the design, testing,
270 manufacture, packaging or labeling of the product that caused the
271 harm for which recovery of damages is sought; the seller altered
272 or modified the product, and the alteration or modification was a
273 substantial factor in causing the harm for which recovery of
274 damages is sought; the seller had actual knowledge of the
275 defective condition of the product at the time he supplied same;
276 or the seller made an express factual representation about the

277 aspect of the product which caused the harm for which recovery of
278 damages is sought.

279 (ii) Subparagraph (i) shall not apply unless the
280 seller has given prompt notice of the suit to the manufacturer
281 within ninety (90) days of the service of the complaint against
282 the seller.

283 (h) In any action alleging that a product is defective
284 pursuant to paragraph (a) of this section, the seller of a product
285 other than the manufacturer shall not be liable unless the seller
286 exercised substantial control over that aspect of the design,
287 testing, manufacture, packaging or labeling of the product that
288 caused the harm for which recovery of damages is sought; or the
289 seller altered or modified the product, and the alteration or
290 modification was a substantial factor in causing the harm for
291 which recovery of damages is sought; or the seller had actual
292 knowledge of the defective condition of the product at the time he
293 supplied the product. It is the intent of this section to
294 insulate innocent sellers who are not actively negligent, but
295 instead are mere conduits of a product.

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

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

301 11-1-65. (1) For the purposes of this section,
302 "compensatory" means the amount of money awarded to a party for
303 the party's actual damages, whether economic or noneconomic.

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

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

310 (b) Punitive damages shall not be awarded against a
311 defendant for any activity that is subject to regulation by a
312 state or federal governmental entity that was in compliance at the
313 time of the activity with specifically applicable regulations of
314 the state or federal governmental entity, provided that the
315 applicable regulations were promulgated for the purpose of
316 protecting the public against the harm or danger that is the
317 subject of the complaint.

318 (c) In any action pursuant to Section 11-1-63, punitive
319 damages shall not be awarded against any defendant who was in
320 compliance with specifically applicable regulations of a state or
321 federal governmental entity, provided that the applicable
322 regulations were promulgated for the purpose of protecting the
323 public against the harm or danger that is the subject of the
324 complaint.

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

329 (e) If, but only if, an award of compensatory damages
330 has been made against a party, the court shall promptly commence
331 an evidentiary hearing * * * to determine whether punitive damages
332 may be considered by the same trier of fact.

333 (f) The court shall determine whether the issue of
334 punitive damages may be submitted to the trier of fact; and, if
335 so, the trier of fact shall determine whether to award punitive
336 damages and in what amount.

337 (g) In all cases involving an award of punitive
338 damages, the fact finder, in determining the amount of punitive
339 damages, shall consider, to the extent relevant, the
340 following: * * * the nature and reprehensibility of the
341 defendant's wrongdoing, for example, the impact of the defendant's
342 conduct on the plaintiff, or the relationship of the defendant to

343 the plaintiff; the defendant's awareness of the amount of harm
344 being caused and the defendant's motivation in causing such harm;
345 the duration of the defendant's misconduct and whether the
346 defendant attempted to conceal such misconduct; and any other
347 circumstances shown by the evidence that bear on determining a
348 proper amount of punitive damages. The trier of fact shall be
349 instructed that the primary purpose of punitive damages is to
350 punish the wrongdoer and deter similar misconduct in the future by
351 the defendant and others while the purpose of compensatory damages
352 is to make the plaintiff whole.

353 (h) (i) Before entering judgment for an award of
354 punitive damages, the trial court shall ascertain that the award
355 is reasonable in its amount and rationally related to the purpose
356 to punish what occurred giving rise to the award and to deter its
357 repetition by the defendant and others.

358 (ii) In determining whether the award is
359 excessive, the court shall take into consideration the following
360 factors:

361 1. Whether there is a reasonable relationship
362 between the punitive damage award and the harm likely to result
363 from the defendant's conduct as well as the harm that actually
364 occurred;

365 2. The degree of reprehensibility of the
366 defendant's conduct, the duration of that conduct, the defendant's
367 awareness, any concealment, and the existence and frequency of
368 similar past conduct;

369 3. In mitigation, the financial condition and
370 net worth of the defendant; and

371 4. In mitigation, the imposition of criminal
372 sanctions on the defendant for its conduct and the existence of
373 other civil awards against the defendant for the same conduct.

374 (3) The seller of a product other than the manufacturer
375 shall not be liable for punitive damages unless the seller

376 exercised substantial control over that aspect of the design,
377 testing, manufacture, packaging or labeling of the product that
378 caused the harm for which recovery of damages is sought; the
379 seller altered or modified the product, and the alteration or
380 modification was a substantial factor in causing the harm for
381 which recovery of damages is sought; the seller had actual
382 knowledge of the defective condition of the product at the time he
383 supplied same * * *.

384 (4) (a) In any civil action where an entitlement to
385 punitive damages shall have been established under applicable
386 laws, no award of punitive damages shall exceed three (3) times
387 the compensatory damages awarded to the plaintiff; however, in no
388 event shall an award of punitive damages awarded against any
389 defendant in any civil action exceed the following:

390 (i) Ten Million Dollars (\$10,000,000.00) for a
391 defendant with a net worth of more than One Billion Dollars
392 (\$1,000,000,000.00);

393 (ii) Seven Million Five Hundred Thousand Dollars
394 (\$7,500,000.00) for a defendant with a net worth of more than
395 Seven Hundred Fifty Million Dollars (\$750,000,000.00) but not more
396 than One Billion Dollars (\$1,000,000,000.00);

397 (iii) Five Million Dollars (\$5,000,000.00) for a
398 defendant with a net worth of more than Five Hundred Million
399 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty
400 Million Dollars (\$750,000,000.00);

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

405 (v) Two Million Five Hundred Thousand Dollars
406 (\$2,500,000.00) for a defendant with a net worth of more than
407 Fifty Million Dollars (\$50,000,000.00) but not more than One
408 Hundred Million Dollars (\$100,000,000.00); or

409 (vi) Two percent (2%) of the defendant's net worth
410 for a defendant with a net worth of Fifty Million Dollars
411 (\$50,000,000.00) or less.

412 (b) For the purposes of determining the defendant's net
413 worth in paragraph (a), the amount of the net worth shall be
414 determined in accordance with Generally Accepted Accounting
415 Principles.

416 (c) The limitation on the amount of punitive damages
417 imposed by this subsection (4) shall not be disclosed to the trier
418 of fact, but shall be applied by the court to any punitive damages
419 verdict.

420 (d) The limitation on the amount of punitive damages
421 imposed by this subsection (4) shall not apply to actions brought
422 for damages or an injury resulting from an act or failure to act
423 by the defendant:

424 (i) If the defendant was convicted of a felony
425 under the laws of this state or under federal law which caused the
426 damages or injury; or

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

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

432 * * *

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

436 (5) Nothing in this section shall be construed as creating a
437 right to an award of punitive damages or to limit the duty of the
438 court, or the appellate courts, to scrutinize all punitive damage
439 awards, ensure that all punitive damage awards comply with
440 applicable procedural, evidentiary and constitutional
441 requirements, and to order remittitur where appropriate.

442 * * *

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

445 11-1-66. (1) No owner, occupant, lessee or managing agent
446 of property shall be civilly liable for failing to prevent or
447 failing to deter any act or omission committed by another person
448 upon the property or premises that is a reckless, wanton,
449 intentionally wrongful, illegal or criminal act.

450 (2) No owner, occupant, lessee or managing agent of property
451 shall be liable for the death or injury of an independent
452 contractor or the independent contractor's employees resulting
453 from dangers of which the contractor knew or reasonably should
454 have known.

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

457 85-5-7. (1) As used in this section, "fault" means an act
458 or omission of a person which is a proximate cause of injury or
459 death to another person or persons, damages to property, tangible
460 or intangible, or economic injury, including, but not limited to,
461 negligence, malpractice, strict liability, absolute liability or
462 failure to warn. "Fault" shall not include any tort which results
463 from an act or omission committed with a specific wrongful intent.

464 * * *

465 (2) Except as otherwise provided in subsection (4) of this
466 section, in any civil action based on fault, the liability for
467 damages caused by two (2) or more persons shall be several only,
468 and not joint and several and a joint tort-feasor shall be liable
469 only for the amount of damages allocated to him in direct
470 proportion to his percentage of fault. In assessing percentages
471 of fault an employer and the employer's employee or a principal
472 and the principal's agent shall be considered as one (1) defendant
473 when the liability of such employer or principal has been caused

474 by the wrongful or negligent act or omission of the employee or
475 agent.

476 * * *

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

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

486 (5) In actions involving joint tort-feasors, the trier of
487 fact shall determine the percentage of fault for each party
488 alleged to be at fault without regard to whether the joint
489 tort-feasor is immune from damages. Fault allocated under this
490 subsection to an immune tort-feasor or a tort-feasor whose
491 liability is limited by law shall not be reallocated to any other
492 tort-feasor.

493 * * *

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

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

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

503 13-5-1. Every citizen not under the age of twenty-one (21)
504 years, who is either a qualified elector, or a resident freeholder
505 of the county for more than one (1) year, is able to read and
506 write, and has not been convicted of a felony within the past ten

507 (10) years is a competent juror. * * * The lack of any such
508 qualifications on the part of one or more jurors shall not,
509 however, vitiate an indictment or verdict. Moreover, * * * no
510 juror shall serve on any jury who has served as such for the last
511 preceding two (2) years. No juror * * * who has a case of his own
512 pending in that court shall serve in his own case.

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

517 "1. Your name _____ Last _____ First _____ Middle
518 initial

519 2. Your home address _____

520 3. Your occupation _____

521 4. Your age _____

522 5. Your telephone number _____ If none, write 'None'

523 6. If you live outside the county seat, the number of miles
524 you live from the courthouse _____ miles

525 _____

526 Sign your name"

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

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

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

536 13-5-23. (1) All qualified persons shall be liable to serve
537 as jurors, unless excused by the court for one (1) of the
538 following causes:

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

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

544 * * *

545 (2) An excuse of illness under subsection (1)(a) of this
546 section may be made to the clerk of court outside of open court by
547 providing the clerk with * * * a certificate of a licensed
548 physician * * *, stating that the juror is ill and is unfit for
549 jury service, in which case the clerk may excuse the juror. If
550 the excuse of illness is not supported by a physician's
551 certificate, a judge of the court for which the individual was
552 called to jury service shall decide whether to excuse an
553 individual under subsection (1)(a) of this section.

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

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

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

565 (iii) Suffer physical hardship that would result
566 in illness or disease.

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

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

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

579 (e) A person asking a judge to grant an excuse under
580 subsection (1)(b) of this section shall be required to provide the
581 judge with documentation such as, but not limited to, federal and
582 state income tax returns, medical statements from licensed
583 physicians, proof of dependency or guardianship and similar
584 documents, which the judge finds to clearly support the request to
585 be excused. Failure to provide satisfactory documentation shall
586 result in a denial of the request to be excused.

587 (4) After two (2) years, a person excused from jury service
588 shall become eligible once again for qualification as a juror
589 unless the person was excused from service permanently. A person
590 is excused from jury service permanently only when the deciding
591 judge determines that the underlying grounds for being excused are
592 of a permanent nature.

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

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

599 13-5-24. (1) Notwithstanding any other provisions of this
600 chapter, individuals scheduled to appear for jury service have the
601 right to postpone the date of their initial appearance for jury
602 service one (1) time only. Postponements shall be granted upon
603 request, provided that:

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

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

609 (c) Prior to the grant of a postponement with the
610 concurrence of the clerk of the court, the prospective juror fixes
611 a date certain to appear for jury service that is not more than
612 six (6) months after the date on which the prospective juror
613 originally was called to serve and on which date the court will be
614 in session.

615 (2) A subsequent request to postpone jury service may be
616 approved by a judicial officer only in the event of an extreme
617 emergency, such as a death in the family, sudden illness, or a
618 natural disaster or a national emergency in which the prospective
619 juror is personally involved, that could not have been anticipated
620 at the time the initial postponement was granted. Prior to the
621 grant of a second postponement, the prospective juror must fix a
622 date certain on which the individual will appear for jury service
623 within six (6) months of the postponement on a date when the court
624 will be in session.

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

627 13-5-25. Every citizen over sixty-five (65) years of age,
628 and everyone who has served on the regular panel as a juror in the
629 actual trial of one or more litigated cases within two (2) years,
630 shall be exempt from service if he claims the privilege * * *. No
631 qualified juror shall be excluded because of any such reasons, but
632 the same shall be a personal privilege to be claimed by any person
633 selected for jury duty. Any citizen over sixty-five (65) years of
634 age may claim this personal privilege outside of open court by
635 providing the clerk of court with information that allows the
636 clerk to determine the validity of the claim.

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

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

643 13-5-28. If a grand, petit or other jury is ordered to be
644 drawn, the clerk thereafter shall cause each person drawn for jury
645 service to be served with a summons, either personally or by mail,
646 addressed to him at his usual residence, business or post office
647 address, requiring him to report for jury service at a specified
648 time and place. The summons shall include instructions to the
649 potential jurors that explain, in layman's terms, the provisions
650 of Section 13-5-23.

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

653 13-5-34. (1) A person summoned for jury service who fails
654 to appear or to complete jury service as directed, and who has
655 failed to obtain a postponement in compliance with the provisions
656 for requesting a postponement, or who fails to appear on the date
657 set pursuant to Section 13-5-24 shall be ordered by the court to
658 appear forthwith and show cause for his failure to comply with the
659 summons. If he fails to show good cause for noncompliance with
660 the summons he is in civil contempt of court and * * * may be
661 fined not more than Five Hundred Dollars (\$500.00) or imprisoned
662 not more than three (3) days, or both. The prospective juror may
663 be excused from paying sanctions for good cause shown or in the
664 interest of justice.

665 (2) In addition to, or in lieu of, the fine or imprisonment
666 provided in subsection (1) of this section, the court may order
667 that the prospective juror complete a period of community service
668 for a period no less than if the prospective juror would have

669 completed jury service, and provide proof of completion of this
670 community service to the court.

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

673 13-5-99. (1) It shall be unlawful for any employer or any
674 other person to persuade or attempt to persuade any juror to avoid
675 jury service; to intimidate or to threaten any juror in that
676 respect; or to remove or otherwise subject an employee to adverse
677 employment action as a result of jury service if the employee
678 notifies his or her employer that he or she has been summoned to
679 serve as a juror within a reasonable period of time after receipt
680 of a summons.

681 (2) It shall be unlawful for an employer to require or
682 request an employee to use annual, vacation or sick leave for time
683 spent responding to a summons for jury duty, time spent
684 participating in the jury selection process, or time spent
685 actually serving on a jury. Nothing in this provision shall be
686 construed to require an employer to provide annual, vacation or
687 sick leave to employees under the provisions of this statute who
688 otherwise are not entitled to such benefits under company
689 policies.

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

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

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

702 25-7-61. (1) Fees of jurors shall be payable as follows:

703 (a) Grand jurors and petit jurors in the chancery,
704 county, circuit and special eminent domain courts shall be paid an
705 amount to be set by the board of supervisors, not to be less than
706 Twenty-five Dollars (\$25.00) per day and not to be greater than
707 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
708 25-3-41. In the trial of all cases where jurors are in charge of
709 bailiffs and are not permitted to separate, the sheriff with the
710 approval of the trial judge may pay for room and board of jurors
711 on panel for actual time of trial.

712 No grand juror shall receive any compensation except mileage
713 unless he shall have been sworn as provided by Section 13-5-45;
714 and no petit juror except those jurors called on special venires
715 shall receive any compensation authorized under this subsection
716 except mileage unless he shall have been sworn as provided by
717 Section 13-5-71.

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

724 (c) Jurors in the justice courts shall be paid an
725 amount of not less than Ten Dollars (\$10.00) per day and not more
726 than Fifteen Dollars (\$15.00) per day, to be established by the
727 board of supervisors. In all criminal cases in the justice court
728 wherein the prosecution fails, the fees of jurors shall be paid by
729 the county treasurer on order of the board of supervisors on
730 certificate of the county attorney in all counties that have
731 county attorneys, otherwise by the justice court judge.

732 (2) Any juror may return the fees provided as compensation
733 for service as a juror to the county which paid for such person's
734 service as a juror. The fees returned to the county may be

735 earmarked for a particular purpose to be selected by the juror,
736 including:

737 (a) The local public library;

738 (b) Local law enforcement;

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

741 (d) Any other governmental agency.

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

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

747 (i) The selection and appointment of an
748 administrator for the fund.

749 (ii) Procedures for the administration of the
750 fund, including payments of salaries of the administrator and
751 other necessary personnel.

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

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

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

763 (c) The court may pay replacement or supplemental wages
764 of up to Three Hundred Dollars (\$300.00) per day per juror
765 beginning on the eleventh day of jury service. In addition, for
766 any jurors who qualify for payment by virtue of having served on a
767 jury for more than ten (10) days, the court, upon finding that

768 such service posed a significant financial hardship to a juror,
769 even in light of payments made with respect to jury service after
770 the tenth day, may award replacement or supplemental wages of up
771 to One Hundred Dollars (\$100.00) per day from the fourth to the
772 tenth day of jury service.

773 (d) Any juror who is serving or has served on a jury
774 that qualifies for payment from the Lengthy Trial Fund, provided
775 the service commenced on or after July 1, 2004, may submit a
776 request for payment from the Lengthy Trial Fund on a form that the
777 administrator provides. Payment shall be limited to the
778 difference between the state-paid jury fee and the actual amount
779 of wages a juror earns, up to the maximum level payable, minus any
780 amount the juror actually receives from the employer during the
781 same time period.

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

787 (ii) The juror also shall be required to submit
788 verification from the employer as to the wage information provided
789 to the administrator, for example, the employee's most recent
790 earnings statement or similar document, prior to initiation of
791 payment from the fund.

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

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

799 33-1-5. Any member of the Mississippi National Guard on
800 active duty shall be exempt from jury duty upon presenting a

801 current written statement from his superior officer that such jury
802 service will be likely to interfere with his military duties.

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

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

809 **SECTION 19.** **Medical review panel.**

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

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

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

814 (ii) "Health care provider" means a person,
815 partnership, limited liability partnership, limited liability
816 company, corporation, facility, or institution licensed by this
817 state to provide health care or professional services as a
818 physician, hospital, institution for the aged or infirm, community
819 blood center, tissue bank, dentist, registered or licensed
820 practical nurse or certified nurse assistant, ambulance service,
821 certified registered nurse anesthetist, nurse-midwife, licensed
822 midwife, pharmacist, optometrist, podiatrist, chiropractor,
823 physical therapist, occupational therapist, psychologist, social
824 worker, licensed professional counselor, or any nonprofit facility
825 considered tax-exempt under Section 501(c)(3), Internal Revenue
826 Code, pursuant to 26 USC 501(c)(3), for the diagnosis and
827 treatment of cancer or cancer-related diseases, whether or not
828 such a facility is required to be licensed by this state, or any
829 professional corporation a health care provider is authorized to
830 form under the Mississippi Code of 1972, or any partnership,
831 limited liability partnership, limited liability company, or
832 corporation whose business is conducted principally by health care

833 providers, or an officer, employee, partner, member, shareholder,
834 or agent thereof acting in the course and scope of his employment.

835 (iii) "Malpractice" means any unintentional tort
836 or any breach of contract based on health care or professional
837 services rendered, or which should have been rendered, by a health
838 care provider, to a patient, including failure to render services
839 timely and the handling of a patient, including loading and
840 unloading of a patient, and also includes all legal responsibility
841 of a health care provider arising from acts or omissions in the
842 training or supervision of health care providers, or from defects
843 in blood, tissue, transplants, drugs and medicines, or from
844 defects in or failures of prosthetic devices, implanted in or used
845 on or in the person of a patient.

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

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

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

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

862 (ii) Each defendant shall file a written answer
863 within thirty (30) days of service of the request. If the
864 defendant fails to file an answer as required, the board shall
865 notify the defendant of the obligation to file and penalty for

866 failure to file; notice shall be by certified or registered United
867 States mail. If the defendant has not filed within thirty (30)
868 days of the receipt of the notice specified in this subparagraph
869 (ii), the request for review shall be dismissed; the panel, if
870 formed, shall be dissolved, and the plaintiff shall be allowed to
871 proceed in court upon the complaint filed.

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

873 (a) During the pendency of proceedings under this
874 section, a health care provider against whom a claim has been
875 filed may raise any exception or defenses available pursuant to
876 Mississippi law, whether a procedural, statute of limitations or
877 other exception or defense, at any time without need for
878 completion of the review process by the medical review panel.

879 (b) If the court finds for the party raising the
880 exception or defense, that party shall be dismissed. If there are
881 no defendants remaining, the panel, if established, shall be
882 dissolved.

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

884 (a) The medical review panel shall consist of three (3)
885 physicians who each hold an unlimited license to practice medicine
886 in Mississippi and one (1) attorney who shall be the nonvoting
887 chair of the panel. The parties may agree on the attorney member
888 of the medical review panel within thirty (30) days after the
889 filing of the answer; if no agreement can be reached, then the
890 attorney member of the medical review panel shall be selected as
891 follows:

892 (i) The board shall draw five (5) names at random
893 from the list of attorneys maintained by the board who have
894 medical malpractice experience. The names of judges, magistrates,
895 district attorneys and assistant district attorneys shall be
896 excluded if drawn and new names drawn in their place. After
897 selection of the attorney names, the board shall notify the
898 parties of the attorney names from which the parties, within five

899 (5) days, may choose the attorney member of the panel. If no
900 agreement can be reached within five (5) days, the parties shall
901 immediately initiate a procedure of selecting the attorney by each
902 striking two (2) names alternately, with the plaintiff striking
903 first and so advising the defendant of the name of the attorney so
904 stricken; thereafter, the defendant and the plaintiff shall
905 alternately strike until both sides have stricken two (2) names
906 and the remaining name shall be the attorney member of the panel.
907 If either the plaintiff or defendant fails to strike, the board
908 shall strike for that party within five (5) additional days.

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

912 (b) The attorney shall act as chairman of the panel and
913 shall have no vote. The chairman shall preside at panel meetings,
914 advise the panel as to questions of law, and shall prepare the
915 opinion of the panel as required in subsection (7) of this
916 section. It is the duty of the chairman to expedite the selection
917 of the other panel members, to convene the panel and expedite the
918 panel's review of the proposed complaint. The attorney chairman
919 shall establish, by order, a reasonable schedule for submission of
920 evidence to the medical review panel, but must allow sufficient
921 time for the parties to make full and adequate presentation of
922 related facts and authorities within one hundred twenty (120) days
923 following selection of the panel.

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

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

931 (ii) Each party to the action shall have the right

932 to select one (1) physician and upon selection the physician shall
933 be required to serve.

934 (iii) When there are multiple plaintiffs or
935 defendants, there shall be only one (1) physician selected per
936 side. The plaintiff, whether single or multiple, shall have the
937 right to select one (1) physician, and the defendant, whether
938 single or multiple, shall have the right to select one (1)
939 physician. The two (2) physicians so chosen shall jointly select
940 the third physician.

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

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

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

950 (vii) The physician selection process shall be
951 completed within thirty (30) days of the selection of the attorney
952 chairman.

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

957 (4) **Evidence.**

958 (a) The evidence to be considered by the medical review
959 panel shall be promptly submitted by the respective parties in
960 written form only.

961 (b) The evidence may consist of:

- 962 (i) Medical records;
- 963 (ii) Sworn statements;
- 964 (iii) Expert reports signed by experts;

965 (iv) Deposition transcripts;
966 (v) Any other evidence allowed by the medical
967 review panel or submitted by the parties.

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

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

974 (e) The plaintiff must sign a valid authorization
975 allowing defendants to obtain the plaintiff's medical records.
976 The defendant shall treat all medical records in a confidential
977 manner and shall not disclose the contents of the records to
978 anyone other than the panel or other experts; all other experts
979 must treat the plaintiff's records as confidential.

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

982 (5) **Hearings.** (a) After submission of all evidence and
983 upon ten (10) days' notice to the other side, either party or the
984 panel shall have the right to convene the panel at a time and
985 place agreeable to the members of the panel; each party is
986 entitled to request only one (1) hearing. The panel may hold as
987 many hearings as it chooses. The purpose of a hearing is to ask
988 questions as to additional evidence needed and to afford an
989 opportunity to make oral presentation of the facts. The chairman
990 of the panel shall preside at all hearings, which shall be
991 informal.

992 (b) The following are locations where hearings may be
993 held:

994 (i) At a courthouse or other available public
995 building in the county where the act or omission is alleged to
996 have occurred.

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

999 (iii) Private offices in the county where the act
1000 or omission is alleged to have occurred may be used if there is no
1001 cost or if the parties pay for the cost.

1002 (6) **Panel deliberations and decision.** After receiving all
1003 evidence from the parties, the panel shall convene to discuss the
1004 evidence presented not less than one (1) time, and, not later than
1005 sixty (60) days after receiving all evidence from the parties,
1006 shall render a written decision signed by the panelists, together
1007 with written reasons for their conclusions, as follows:

1008 (a) There was a breach of the appropriate standard of
1009 care;

1010 (b) There was not a breach of the appropriate standard
1011 of care; or

1012 (c) Whether the defendant or defendants failed to
1013 comply with the appropriate standard of care cannot be determined.

1014 (7) **Form of decision.** The decision reached by the medical
1015 review panel shall be in writing, shall state the facts upon which
1016 it is based, shall be of public record, and shall be admissible as
1017 evidence in the civil case filed.

1018 (8) **Panelist immunity.** A panelist shall have absolute
1019 immunity from civil liability for all communications, findings,
1020 opinions and conclusions made in the course and scope of duties
1021 prescribed by this section.

1022 (9) **Panelist compensation.**

1023 (a) (i) Each physician member of the medical review
1024 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for
1025 all work performed as a member of the panel, and in addition
1026 thereto, per diem as provided in Section 25-3-69, Mississippi Code
1027 of 1972, and travel expenses as would be calculated for a state
1028 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1029 (ii) The attorney chairman of the medical review
1030 panel shall be paid at the rate of One Hundred Fifty Dollars
1031 (\$150.00) per hour, not to exceed a total of Three Thousand
1032 Dollars (\$3,000.00), for all work performed as a member of the
1033 panel, and in addition thereto, per diem as provided in Section
1034 25-3-69, Mississippi Code of 1972, and travel expenses as would be
1035 calculated for a state employee pursuant to Section 25-3-41,
1036 Mississippi Code of 1972.

1037 (b) The costs of the medical review panel shall be
1038 split between the parties. The panel members shall by affidavit
1039 request the payment due under this subsection (9) from the board,
1040 which in turn shall bill the parties for the proportionate share
1041 of each party.

1042 (10) **Delivery and effect of decision.** The chairman shall
1043 submit a copy of the panel's report to the board and all parties
1044 and attorneys by registered or certified mail within five (5) days
1045 after the panel renders its opinion. The panel's report shall be
1046 of public record.

1047 (11) **Allocation of attorney fees and expenses.**

1048 (a) If the decision of the panel finds for the
1049 defendant and the defendant prevails in court, the plaintiff shall
1050 pay reasonable attorney fees and expenses of the defendant to be
1051 determined by the court.

1052 (b) If the decision of the panel finds for the
1053 plaintiff:

1054 (i) The plaintiff may submit a written settlement
1055 offer for a sum certain to the defendant. If the defendant
1056 rejects the settlement offer, the plaintiff prevails in court, and
1057 the judgment is equal to or greater than the settlement offer, the
1058 defendant shall pay reasonable attorney fees and expenses of the
1059 plaintiff to be determined by the court.

1060 (ii) The defendant also may submit a written
1061 settlement offer for a sum certain to the plaintiff. If the

1062 plaintiff rejects the settlement offer and the defendant prevails
1063 in the subsequent court action, or the plaintiff prevails but the
1064 judgment is less than the defendant's settlement offer, the
1065 plaintiff shall pay reasonable attorney fees and expenses of the
1066 defendant to be determined by the court.

1067 **SECTION 20.** Section 11-46-19, Mississippi Code of 1972, is
1068 amended as follows:

1069 **[Until July 1, 2005, this section shall read as follows:]**

1070 11-46-19. (1) The board shall have the following powers:

1071 (a) To provide oversight over the Tort Claims Fund;

1072 (b) To approve any award made from the Tort Claims
1073 Fund;

1074 (c) To pay all necessary expenses attributable to the
1075 operation of the Tort Claims Fund from such fund;

1076 (d) To assign litigated claims against governmental
1077 entities other than political subdivisions to competent attorneys
1078 unless such governmental entity has a staff attorney who is
1079 competent to represent the governmental entity and is approved by
1080 the board; the board shall give primary consideration to attorneys
1081 practicing in the jurisdiction where the claim arose in assigning
1082 cases; attorneys hired to represent a governmental entity other
1083 than a political subdivision shall be paid according to the
1084 department fee schedule;

1085 (e) To approve all claimants' attorney fees in claims
1086 against the state;

1087 (f) To employ on a full-time basis a staff attorney who
1088 shall possess the minimum qualifications required to be a member
1089 of The Mississippi Bar, and such other staff as it may deem
1090 necessary to carry out the purposes of this chapter; the employees
1091 in the positions approved by the board shall be hired by the
1092 director, shall be employees of the department, and shall be
1093 compensated from the Tort Claims Fund;

1094 (g) To contract with one or more reputable insurance
1095 consulting firms as may be necessary;

1096 (h) To purchase any policies of liability insurance and
1097 to administer any plan of self-insurance or policies of liability
1098 insurance required for the protection of the state against claims
1099 and suits brought under this chapter;

1100 (i) To expend money from the Tort Claims Fund for the
1101 purchase of any policies of liability insurance and the payment of
1102 any award or settlement of a claim against the state under the
1103 provisions of this chapter or of a claim against any school
1104 district, junior college or community college district, or state
1105 agency, arising from the operation of school buses or other
1106 vehicles, under the provisions of Section 37-41-42;

1107 (j) To cancel, modify or replace any policy or policies
1108 of liability insurance procured by the board;

1109 (k) To issue certificates of coverage to governmental
1110 entities, including any political subdivision participating in any
1111 plan of liability protection approved by the board;

1112 (l) To review and approve or reject any plan of
1113 liability insurance or self-insurance reserves proposed or
1114 provided by political subdivisions if such plan is intended to
1115 serve as security for risks of claims and suits against them for
1116 which immunity has been waived under this chapter;

1117 (m) To administer disposition of claims against the
1118 Tort Claims Fund;

1119 (n) To withhold issuance of any warrants payable from
1120 funds of a participating state entity should such entity fail to
1121 make required contributions to the Tort Claims Fund in the time
1122 and manner prescribed by the board;

1123 (o) To develop a comprehensive statewide list of
1124 attorneys who are qualified to represent the state and any
1125 employee thereof named as a defendant in a claim brought under
1126 this chapter against the state or such employee;

1127 (p) To develop a schedule of fees for paying attorneys
1128 defending claims against the state or an employee thereof;

1129 (q) To adopt and promulgate such reasonable rules and
1130 regulations and to do and perform all such acts as are necessary
1131 to carry out its powers and duties under this chapter;

1132 (r) To establish and assess premiums to be paid by
1133 governmental entities required to participate in the Tort Claims
1134 Fund;

1135 (s) To contract with a third-party administrator to
1136 process claims against the state under this chapter;

1137 (t) To annually submit its budget request to the
1138 Legislature as a state agency;

1139 (u) To dispose of salvage obtained in settlement or
1140 payment of any claim at fair market value by such means and upon
1141 such terms as the board may think best; * * *

1142 (v) To administer the Medical Malpractice Insurance
1143 Availability Plan under Section 83-48-5; and

1144 (w) To act as the board as required under House Bill
1145 No. _____, 2004 First Extraordinary Session, dealing with medical
1146 malpractice claims as follows:

1147 (i) To accept filings under the act;

1148 (ii) To coordinate the selection of panels;

1149 (iii) To maintain lists of attorneys eligible for
1150 appointment as attorney chairmen;

1151 (iv) To promulgate rules in reference to the
1152 qualifications of attorneys serving as panel members;

1153 (v) To promulgate rules and regulations necessary
1154 to implement the provisions of Section 19 of House Bill No. _____,
1155 2004 First Extraordinary Session; and

1156 (vi) To provide general administrative support.

1157 (2) Policies of liability insurance purchased for the
1158 protection of governmental entities against claims and suits

1159 brought under this chapter shall be purchased pursuant to the
1160 competitive bidding procedures set forth in Section 31-7-13.

1161 (3) The department shall have the following powers and
1162 duties:

1163 (a) To annually report to the Legislature concerning
1164 each comprehensive plan of liability protection established
1165 pursuant to Section 11-46-17(2). Such report shall include a
1166 comprehensive analysis of the cost of the plan, a breakdown of the
1167 cost to participating state entities, and such other information
1168 as the department may deem necessary.

1169 (b) To provide the board with any staff and meeting
1170 facilities as may be necessary to carry out the duties of the
1171 board as provided in this chapter.

1172 (c) To submit the board's budget request for the
1173 initial year of operation of the board in order to authorize
1174 expenditures for the 1993-1994 fiscal year and for the
1175 appropriation of such general funds as shall be required for the
1176 commencement of its activities.

1177 **[From and after July 1, 2005, this section shall read as**
1178 **follows:]**

1179 11-46-19. (1) The board shall have the following powers:

1180 (a) To provide oversight over the Tort Claims Fund;

1181 (b) To approve any award made from the Tort Claims
1182 Fund;

1183 (c) To pay all necessary expenses attributable to the
1184 operation of the Tort Claims Fund from such fund;

1185 (d) To assign litigated claims against governmental
1186 entities other than political subdivisions to competent attorneys
1187 unless such governmental entity has a staff attorney who is
1188 competent to represent the governmental entity and is approved by
1189 the board; the board shall give primary consideration to attorneys
1190 practicing in the jurisdiction where the claim arose in assigning
1191 cases; attorneys hired to represent a governmental entity other

1192 than a political subdivision shall be paid according to the
1193 department fee schedule;

1194 (e) To approve all claimants' attorney fees in claims
1195 against the state;

1196 (f) To employ on a full-time basis a staff attorney who
1197 shall possess the minimum qualifications required to be a member
1198 of The Mississippi Bar, and such other staff as it may deem
1199 necessary to carry out the purposes of this chapter; the employees
1200 in the positions approved by the board shall be hired by the
1201 director, shall be employees of the department, and shall be
1202 compensated from the Tort Claims Fund;

1203 (g) To contract with one or more reputable insurance
1204 consulting firms as may be necessary;

1205 (h) To purchase any policies of liability insurance and
1206 to administer any plan of self-insurance or policies of liability
1207 insurance required for the protection of the state against claims
1208 and suits brought under this chapter;

1209 (i) To expend money from the Tort Claims Fund for the
1210 purchase of any policies of liability insurance and the payment of
1211 any award or settlement of a claim against the state under the
1212 provisions of this chapter or of a claim against any school
1213 district, junior college or community college district, or state
1214 agency, arising from the operation of school buses or other
1215 vehicles, under the provisions of Section 37-41-42;

1216 (j) To cancel, modify or replace any policy or policies
1217 of liability insurance procured by the board;

1218 (k) To issue certificates of coverage to governmental
1219 entities, including any political subdivision participating in any
1220 plan of liability protection approved by the board;

1221 (l) To review and approve or reject any plan of
1222 liability insurance or self-insurance reserves proposed or
1223 provided by political subdivisions if such plan is intended to

1224 serve as security for risks of claims and suits against them for
1225 which immunity has been waived under this chapter;

1226 (m) To administer disposition of claims against the
1227 Tort Claims Fund;

1228 (n) To withhold issuance of any warrants payable from
1229 funds of a participating state entity should such entity fail to
1230 make required contributions to the Tort Claims Fund in the time
1231 and manner prescribed by the board;

1232 (o) To develop a comprehensive statewide list of
1233 attorneys who are qualified to represent the state and any
1234 employee thereof named as a defendant in a claim brought under
1235 this chapter against the state or such employee;

1236 (p) To develop a schedule of fees for paying attorneys
1237 defending claims against the state or an employee thereof;

1238 (q) To adopt and promulgate such reasonable rules and
1239 regulations and to do and perform all such acts as are necessary
1240 to carry out its powers and duties under this chapter;

1241 (r) To establish and assess premiums to be paid by
1242 governmental entities required to participate in the Tort Claims
1243 Fund;

1244 (s) To contract with a third-party administrator to
1245 process claims against the state under this chapter;

1246 (t) To annually submit its budget request to the
1247 Legislature as a state agency;

1248 (u) To dispose of salvage obtained in settlement or
1249 payment of any claim at fair market value by such means and upon
1250 such terms as the board may think best; and

1251 (v) To act as the board as required under House Bill
1252 No. _____, 2004 First Extraordinary Session, dealing with medical
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1254 (i) To accept filings under the act;

1255 (ii) To coordinate the selection of panels;

1256 (iii) To maintain lists of attorneys eligible for
1257 appointment as attorney chairmen;

1258 (iv) To promulgate rules in reference to the
1259 qualifications of attorneys serving as panel members;

1260 (v) To promulgate rules and regulations necessary
1261 to implement the provisions of Section 19 of House Bill No. _____,
1262 2004 First Extraordinary Session; and

1263 (vi) To provide general administrative support.

1264 (2) Policies of liability insurance purchased for the
1265 protection of governmental entities against claims and suits
1266 brought under this chapter shall be purchased pursuant to the
1267 competitive bidding procedures set forth in Section 31-7-13.

1268 (3) The department shall have the following powers and
1269 duties:

1270 (a) To annually report to the Legislature concerning
1271 each comprehensive plan of liability protection established
1272 pursuant to Section 11-46-17(2). Such report shall include a
1273 comprehensive analysis of the cost of the plan, a breakdown of the
1274 cost to participating state entities, and such other information
1275 as the department may deem necessary.

1276 (b) To provide the board with any staff and meeting
1277 facilities as may be necessary to carry out the duties of the
1278 board as provided in this chapter.

1279 (c) To submit the board's budget request for the
1280 initial year of operation of the board in order to authorize
1281 expenditures for the 1993-1994 fiscal year and for the
1282 appropriation of such general funds as shall be required for the
1283 commencement of its activities.

1284 **SECTION 21.** If any provision of this act is held by a court
1285 to be invalid, such invalidity shall not affect the remaining
1286 provisions of this act, and to this end the provisions of this act
1287 are declared severable.

1288 **SECTION 22.** This act shall take effect and be in force from
1289 and after July 1, 2004, and Sections 1 through 7 of this act shall
1290 apply to all causes of action filed on or after that date.