

By: Representatives Blackmon,  
Simpson, Compretta, Smith (39th),  
Franks, Watson, Moak

To: Judiciary A

HOUSE BILL NO. 13  
(As Sent to Governor)

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 REVISE PUNITIVE DAMAGES; TO AMEND  
11 SECTION 11-1-66, MISSISSIPPI CODE OF 1972, TO REVISE PREMISES  
12 LIABILITY; TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO  
13 REVISE THE LIMITATION OF JOINT AND SEVERAL LIABILITY FOR DAMAGES  
14 CAUSED BY TWO OR MORE PERSONS; TO REPEAL SECTION 11-1-64,  
15 MISSISSIPPI CODE OF 1972, WHICH PROVIDES THE PROCEDURE FOR  
16 DISMISSING A DEFENDANT WHOSE LIABILITY IS BASED SOLELY ON HIS  
17 STATUS AS A SELLER IN THE STREAM OF COMMERCE; TO AMEND SECTION  
18 13-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURORS CAN ONLY  
19 BE EXCUSED FROM SERVICE FOR ILLNESS OR UNDUE HARDSHIP; TO AMEND  
20 SECTION 13-5-25, MISSISSIPPI CODE OF 1972, TO LIMIT THE FREQUENCY  
21 OF JURY SERVICE; TO AMEND SECTION 13-5-28, MISSISSIPPI CODE OF  
22 1972, TO REQUIRE NOTICE OF JURY SERVICE EXEMPTION ENTITLEMENT TO  
23 BE INCLUDED IN JUROR SUMMONSES; TO AMEND SECTION 13-5-34,  
24 MISSISSIPPI CODE OF 1972, TO REVISE THE PUNISHMENT FOR FAILURE TO  
25 APPEAR FOR JURY SERVICE; TO AMEND SECTION 25-7-61, MISSISSIPPI  
26 CODE OF 1972, TO CREATE A LENGTHY TRIAL FUND AND TO MAKE CLEAR  
27 THAT NO COUNTY FUNDS WILL BE USED TO PAY SUPPLEMENTAL OR  
28 REPLACEMENT WAGES TO JURORS UNDER THE ACT; TO AMEND SECTION  
29 33-1-5, MISSISSIPPI CODE OF 1972, TO ELIMINATE CERTAIN JUROR  
30 EXEMPTIONS; TO PROVIDE THAT JURORS CAN POSTPONE JURY SERVICE ONE  
31 TIME ONLY; TO PROVIDE EMPLOYMENT PROTECTIONS FOR JURORS; TO AMEND  
32 SECTION 73-25-27, MISSISSIPPI CODE OF 1972, TO PROVIDE THE RIGHT  
33 FOR HARMED PATIENTS TO ATTEND DISCIPLINARY PROCEEDINGS INVOLVING  
34 THE PHYSICIAN RESPONSIBLE FOR THE HARM; TO PROVIDE FOR A WAIVER OF  
35 THE MEDICAL PRIVILEGE IN CERTAIN CASES; TO ALLOW BENCH TRIALS IN  
36 CERTAIN CASES IF THE PARTIES AGREE; AND FOR RELATED PURPOSES.

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

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

40 11-11-3. (1) (a) (i) Civil actions of which the circuit  
41 court has original jurisdiction shall be commenced in the county  
42 where the defendant resides, or, if a corporation, in the county  
43 of its principal place of business, or in the county where a

44 substantial alleged act or omission occurred or where a  
45 substantial event that caused the injury occurred. \* \* \*

46 (ii) Civil actions alleging a defective product  
47 may also be commenced in the county where the plaintiff obtained  
48 the product.

49 (b) If venue in a civil action against a nonresident  
50 defendant cannot be asserted under paragraph (a) of this  
51 subsection (1), a civil action against a nonresident may be  
52 commenced in the county where the plaintiff resides or is  
53 domiciled.

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

58 (3) Notwithstanding subsection (1) of this section, any  
59 action against a licensed physician, osteopath, dentist, nurse,  
60 nurse-practitioner, physician assistant, psychologist, pharmacist,  
61 podiatrist, optometrist, chiropractor, institution for the aged or  
62 infirm, hospital or licensed pharmacy, including any legal entity  
63 which may be liable for their acts or omissions, for malpractice,  
64 negligence, error, omission, mistake, breach of standard of care  
65 or the unauthorized rendering of professional services shall be  
66 brought only in the county in which the alleged act or omission  
67 occurred.

68 (4) (a) If a court of this state, on written motion of a  
69 party, finds that in the interest of justice and for the  
70 convenience of the parties and witnesses a claim or action would  
71 be more properly heard in a forum outside this state or in a  
72 different county of proper venue within this state, the court  
73 shall decline to adjudicate the matter under the doctrine of forum  
74 non conveniens. As to a claim or action that would be more  
75 properly heard in a forum outside this state, the court shall  
76 dismiss the claim or action. As to a claim or action that would

77 be more properly heard in a different county of proper venue  
78 within this state, the venue shall be transferred to the  
79 appropriate county. In determining whether to grant a motion to  
80 dismiss an action or to transfer venue under the doctrine of forum  
81 non conveniens, the court shall give consideration to the  
82 following factors:

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

84 (ii) Availability and cost of compulsory process  
85 for attendance of unwilling witnesses;

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

88 (iv) Unnecessary expense or trouble to the  
89 defendant not necessary to the plaintiff's own right to pursue his  
90 remedy;

91 (v) Administrative difficulties for the forum  
92 courts;

93 (vi) Existence of local interests in deciding the  
94 case at home; and

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

97 (b) A court may not dismiss a claim under this  
98 subsection until the defendant files with the court or with the  
99 clerk of the court a written stipulation that, with respect to a  
100 new action on the claim commenced by the plaintiff, all the  
101 defendants waive the right to assert a statute of limitations  
102 defense in all other states of the United States in which the  
103 claim was not barred by limitations at the time the claim was  
104 filed in this state as necessary to effect a tolling of the  
105 limitations periods in those states beginning on the date the  
106 claim was filed in this state and ending on the date the claim is  
107 dismissed.

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

110 11-1-60. (1) For the purposes of this section, the  
111 following words and phrases shall have the meanings ascribed  
112 herein unless the context clearly requires otherwise:

113 (a) "Noneconomic damages" means subjective,  
114 nonpecuniary damages arising from death, pain, suffering,  
115 inconvenience, mental anguish, worry, emotional distress, loss of  
116 society and companionship, loss of consortium, bystander injury,  
117 physical impairment, disfigurement, injury to reputation,  
118 humiliation, embarrassment, loss of the enjoyment of life, hedonic  
119 damages, other nonpecuniary damages, and any other theory of  
120 damages such as fear of loss, illness or injury. The term  
121 "noneconomic damages" shall not include \* \* \* punitive or  
122 exemplary damages.

123 (b) "Actual economic damages" means objectively  
124 verifiable pecuniary damages arising from medical expenses and  
125 medical care, rehabilitation services, custodial care,  
126 disabilities, loss of earnings and earning capacity, loss of  
127 income, burial costs, loss of use of property, costs of repair or  
128 replacement of property, costs of obtaining substitute domestic  
129 services, loss of employment, loss of business or employment  
130 opportunities, and other objectively verifiable monetary losses.

131 \* \* \*

132 (2) (a) In any cause of action filed on or after September  
133 1, 2004, for injury based on malpractice or breach of standard of  
134 care against a provider of health care, including institutions for  
135 the aged or infirm, in the event the trier of fact finds the  
136 defendant liable, they shall not award the plaintiff more than  
137 Five Hundred Thousand Dollars (\$500,000.00) for noneconomic  
138 damages.

139 \* \* \*

140 (b) In any civil action filed on or after September 1,  
141 2004, other than those actions described in paragraph (a) of this  
142 subsection, in the event the trier of fact finds the defendant

143 liable, they shall not award the plaintiff more than One Million  
144 Dollars (\$1,000,000.00) for noneconomic damages.

145 It is the intent of this section to limit all noneconomic  
146 damages to the above.

147 (c) The trier of fact shall not be advised of the  
148 limitations imposed by this subsection (2) and the judge shall  
149 appropriately reduce any award of noneconomic damages that exceeds  
150 the applicable limitation.

151 (3) Nothing contained in subsection (1) of this section  
152 shall be construed as creating a cause of action or as setting  
153 forth elements of or types of damages that are or are not  
154 recoverable in any type of cause of action.

155 \* \* \*

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

158 11-1-63. Subject to the provisions of Section 11-1-64, in  
159 any action for damages caused by a product except for commercial  
160 damage to the product itself:

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

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

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

171 3. The product was designed in a defective  
172 manner, or

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

175 which the claimant justifiably relied in electing to use the  
176 product; and

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

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

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

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

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

208 professional person, taking into account the characteristics of,  
209 and the ordinary knowledge common to, a physician or other  
210 licensed professional who prescribes the drug, device or other  
211 product.

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

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

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

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

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

241 alternative is a design that would have to a reasonable  
242 probability prevented the harm without impairing the utility,  
243 usefulness, practicality or desirability of the product to users  
244 or consumers.

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

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

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



274 at the time he supplied the product. It is the intent of this  
275 section to immunize innocent sellers who are not actively  
276 negligent, but instead are mere conduits of a product.

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

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

282 11-1-65. (1) In any action in which punitive damages are  
283 sought:

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

289 (b) In any action in which the claimant seeks an award  
290 of punitive damages, the trier of fact shall first determine  
291 whether compensatory damages are to be awarded and in what amount,  
292 before addressing any issues related to punitive damages.

293 (c) If, but only if, an award of compensatory damages  
294 has been made against a party, the court shall promptly commence  
295 an evidentiary hearing \* \* \* to determine whether punitive damages  
296 may be considered by the same trier of fact.

297 (d) The court shall determine whether the issue of  
298 punitive damages may be submitted to the trier of fact; and, if  
299 so, the trier of fact shall determine whether to award punitive  
300 damages and in what amount.

301 (e) In all cases involving an award of punitive  
302 damages, the fact finder, in determining the amount of punitive  
303 damages, shall consider, to the extent relevant, the following:  
304 the defendant's financial condition and net worth; the nature and  
305 reprehensibility of the defendant's wrongdoing, for example, the  
306 impact of the defendant's conduct on the plaintiff, or the

307 relationship of the defendant to the plaintiff; the defendant's  
308 awareness of the amount of harm being caused and the defendant's  
309 motivation in causing such harm; the duration of the defendant's  
310 misconduct and whether the defendant attempted to conceal such  
311 misconduct; and any other circumstances shown by the evidence that  
312 bear on determining a proper amount of punitive damages. The  
313 trier of fact shall be instructed that the primary purpose of  
314 punitive damages is to punish the wrongdoer and deter similar  
315 misconduct in the future by the defendant and others while the  
316 purpose of compensatory damages is to make the plaintiff whole.

317 (f) (i) Before entering judgment for an award of  
318 punitive damages the trial court shall ascertain that the award is  
319 reasonable in its amount and rationally related to the purpose to  
320 punish what occurred giving rise to the award and to deter its  
321 repetition by the defendant and others.

322 (ii) In determining whether the award is  
323 excessive, the court shall take into consideration the following  
324 factors:

325 1. Whether there is a reasonable relationship  
326 between the punitive damage award and the harm likely to result  
327 from the defendant's conduct as well as the harm that actually  
328 occurred;

329 2. The degree of reprehensibility of the  
330 defendant's conduct, the duration of that conduct, the defendant's  
331 awareness, any concealment, and the existence and frequency of  
332 similar past conduct;

333 3. The financial condition and net worth of  
334 the defendant; and

335 4. In mitigation, the imposition of criminal  
336 sanctions on the defendant for its conduct and the existence of  
337 other civil awards against the defendant for the same conduct.

338 (2) The seller of a product other than the manufacturer  
339 shall not be liable for punitive damages unless the seller

340 exercised substantial control over that aspect of the design,  
341 testing, manufacture, packaging or labeling of the product that  
342 caused the harm for which recovery of damages is sought; the  
343 seller altered or modified the product, and the alteration or  
344 modification was a substantial factor in causing the harm for  
345 which recovery of damages is sought; the seller had actual  
346 knowledge of the defective condition of the product at the time he  
347 supplied same \* \* \*.

348 (3) (a) In any civil action where an entitlement to  
349 punitive damages shall have been established under applicable  
350 laws, no award of punitive damages shall exceed the following:

351 (i) Twenty Million Dollars (\$20,000,000.00) for a  
352 defendant with a net worth of more than One Billion Dollars  
353 (\$1,000,000,000.00);

354 (ii) Fifteen Million Dollars (\$15,000,000.00) for  
355 a defendant with a net worth of more than Seven Hundred Fifty  
356 Million Dollars (\$750,000,000.00) but not more than One Billion  
357 Dollars (\$1,000,000,000.00);

358 (iii) Five Million Dollars (\$5,000,000.00) for a  
359 defendant with a net worth of more than Five Hundred Million  
360 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty  
361 Million Dollars (\$750,000,000.00);

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

366 (v) Two Million Five Hundred Thousand Dollars  
367 (\$2,500,000.00) for a defendant with a net worth of more than  
368 Fifty Million Dollars (\$50,000,000.00) but not more than One  
369 Hundred Million Dollars (\$100,000,000.00); or

370 (vi) Two percent (2%) of the defendant's net worth  
371 for a defendant with a net worth of Fifty Million Dollars  
372 (\$50,000,000.00) or less.

373 (b) For the purposes of determining the defendant's net  
374 worth in paragraph (a), the amount of the net worth shall be  
375 determined in accordance with Generally Accepted Accounting  
376 Principles.

377 (c) The limitation on the amount of punitive damages  
378 imposed by this subsection (3) shall not be disclosed to the trier  
379 of fact, but shall be applied by the court to any punitive damages  
380 verdict.

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

385 (i) If the defendant was convicted of a felony  
386 under the laws of this state or under federal law which caused the  
387 damages or injury; or

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

391 \* \* \*

392 (4) Nothing in this section shall be construed as creating a  
393 right to an award of punitive damages or to limit the duty of the  
394 court, or the appellate courts, to scrutinize all punitive damage  
395 awards, ensure that all punitive damage awards comply with  
396 applicable procedural, evidentiary and constitutional  
397 requirements, and to order remittitur where appropriate.

398 \* \* \*

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

401 11-1-66. No owner, occupant, lessee or managing agent of  
402 property shall be \* \* \* liable for the death or injury of an  
403 independent contractor or the independent contractor's employees  
404 resulting from dangers of which the contractor knew or reasonably  
405 should have known.

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

408           85-5-7. (1) As used in this section, "fault" means an act  
409 or omission of a person which is a proximate cause of injury or  
410 death to another person or persons, damages to property, tangible  
411 or intangible, or economic injury, including, but not limited to,  
412 negligence, malpractice, strict liability, absolute liability or  
413 failure to warn. "Fault" shall not include any tort which results  
414 from an act or omission committed with a specific wrongful intent.

415           \* \* \*

416           (2) Except as otherwise provided in subsection (4) of this  
417 section, in any civil action based on fault, the liability for  
418 damages caused by two (2) or more persons shall be several only,  
419 and not joint and several and a joint tort-feasor shall be liable  
420 only for the amount of damages allocated to him in direct  
421 proportion to his percentage of fault. In assessing percentages  
422 of fault an employer and the employer's employee or a principal  
423 and the principal's agent shall be considered as one (1) defendant  
424 when the liability of such employer or principal has been caused  
425 by the wrongful or negligent act or omission of the employee or  
426 agent.

427           \* \* \*

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

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

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

439 alleged to be at fault without regard to whether the joint  
440 tort-feasor is immune from damages. Fault allocated under this  
441 subsection to an immune tort-feasor or a tort-feasor whose  
442 liability is limited by law shall not be reallocated to any other  
443 tort-feasor.

444 \* \* \*

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

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

452 **SECTION 8.** Section 13-5-23, Mississippi Code of 1972, is  
453 amended as follows:

454 13-5-23. (1) All qualified persons shall be liable to serve  
455 as jurors, unless excused by the court for one (1) of the  
456 following causes:

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

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

462 \* \* \*

463 (2) An excuse of illness under subsection (1)(a) of this  
464 section may be made to the clerk of court outside of open court by  
465 providing the clerk with \* \* \* a certificate of a licensed  
466 physician \* \* \*, stating that the juror is ill and is unfit for  
467 jury service, in which case the clerk may excuse the juror. If  
468 the excuse of illness is not supported by a physician's  
469 certificate, a judge of the court for which the individual was  
470 called to jury service shall decide whether to excuse an  
471 individual under subsection (1)(a) of this section.

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

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

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

483               (iii) Suffer physical hardship that would result  
484 in illness or disease.

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

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

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

497       (e) A person asking a judge to grant an excuse under  
498 subsection (1)(b) of this section shall be required to provide the  
499 judge with documentation such as, but not limited to, federal and  
500 state income tax returns, medical statements from licensed  
501 physicians, proof of dependency or guardianship and similar  
502 documents, which the judge finds to clearly support the request to  
503 be excused. Failure to provide satisfactory documentation shall  
504 result in a denial of the request to be excused.

505       (4) After two (2) years, a person excused from jury service  
506 shall become eligible once again for qualification as a juror  
507 unless the person was excused from service permanently. A person  
508 is excused from jury service permanently only when the deciding  
509 judge determines that the underlying grounds for being excused are  
510 of a permanent nature.

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

515       **SECTION 9.** Section 13-5-25, Mississippi Code of 1972, is  
516 amended as follows:

517       13-5-25. Every citizen over sixty-five (65) years of age,  
518 and everyone who has served on the regular panel as a juror in the  
519 actual trial of one or more litigated cases within two (2) years,  
520 shall be exempt from service if he claims the privilege \* \* \*. No  
521 qualified juror shall be excluded because of any such reasons, but  
522 the same shall be a personal privilege to be claimed by any person  
523 selected for jury duty. Any citizen over sixty-five (65) years of  
524 age may claim this personal privilege outside of open court by  
525 providing the clerk of court with information that allows the  
526 clerk to determine the validity of the claim.

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

531       **SECTION 10.** Section 13-5-28, Mississippi Code of 1972, is  
532 amended as follows:

533       13-5-28. If a grand, petit or other jury is ordered to be  
534 drawn, the clerk thereafter shall cause each person drawn for jury  
535 service to be served with a summons, either personally or by mail,  
536 addressed to him at his usual residence, business or post office  
537 address, requiring him to report for jury service at a specified



538 time and place. The summons shall include instructions to the  
539 potential jurors that explain, in layman's terms, the provisions  
540 of Section 13-5-23.

541 **SECTION 11.** Section 13-5-34, Mississippi Code of 1972, is  
542 amended as follows:

543 13-5-34. (1) A person summoned for jury service who fails  
544 to appear or to complete jury service as directed, and who has  
545 failed to obtain a postponement in compliance with the provisions  
546 for requesting a postponement, or who fails to appear on the date  
547 set pursuant to Section 14 of House Bill No. 13, 2004 First  
548 Extraordinary Session, shall be ordered by the court to appear  
549 forthwith and show cause for his failure to comply with the  
550 summons. If he fails to show good cause for noncompliance with  
551 the summons he is in civil contempt of court and \* \* \* may be  
552 fined not more than Five Hundred Dollars (\$500.00) or imprisoned  
553 not more than three (3) days, or both. The prospective juror may  
554 be excused from paying sanctions for good cause shown or in the  
555 interest of justice.

556 (2) In addition to, or in lieu of, the fine or imprisonment  
557 provided in subsection (1) of this section, the court may order  
558 that the prospective juror complete a period of community service  
559 for a period no less than if the prospective juror would have  
560 completed jury service, and provide proof of completion of this  
561 community service to the court.

562 **SECTION 12.** Section 25-7-61, Mississippi Code of 1972, is  
563 amended as follows:

564 25-7-61. (1) Fees of jurors shall be payable as follows:

565 (a) Grand jurors and petit jurors in the chancery,  
566 county, circuit and special eminent domain courts shall be paid an  
567 amount to be set by the board of supervisors, not to be less than  
568 Twenty-five Dollars (\$25.00) per day and not to be greater than  
569 Forty Dollars (\$40.00) per day, plus mileage authorized in Section  
570 25-3-41. In the trial of all cases where jurors are in charge of

571 bailiffs and are not permitted to separate, the sheriff with the  
572 approval of the trial judge may pay for room and board of jurors  
573 on panel for actual time of trial.

574 No grand juror shall receive any compensation except mileage  
575 unless he shall have been sworn as provided by Section 13-5-45;  
576 and no petit juror except those jurors called on special venires  
577 shall receive any compensation authorized under this subsection  
578 except mileage unless he shall have been sworn as provided by  
579 Section 13-5-71.

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

586 (c) Jurors in the justice courts shall be paid an  
587 amount of not less than Ten Dollars (\$10.00) per day and not more  
588 than Fifteen Dollars (\$15.00) per day, to be established by the  
589 board of supervisors. In all criminal cases in the justice court  
590 wherein the prosecution fails, the fees of jurors shall be paid by  
591 the county treasurer on order of the board of supervisors on  
592 certificate of the county attorney in all counties that have  
593 county attorneys, otherwise by the justice court judge.

594 (2) Any juror may return the fees provided as compensation  
595 for service as a juror to the county which paid for such person's  
596 service as a juror. The fees returned to the county may be  
597 earmarked for a particular purpose to be selected by the juror,  
598 including:

599 (a) The local public library;

600 (b) Local law enforcement;

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

603 (d) Any other governmental agency.

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

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

609                   (i) The selection and appointment of an  
610 administrator for the fund.

611                   (ii) Procedures for the administration of the  
612 fund, including payments of salaries of the administrator and  
613 other necessary personnel.

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

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

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

625           (c) To the extent funds are available in the Lengthy  
626 Trial Fund, and in accordance with any rules or regulations  
627 promulgated by the Administrative Office of Courts, the court may  
628 pay replacement or supplemental wages out of the Lengthy Trial  
629 Fund not to exceed Three Hundred Dollars (\$300.00) per day per  
630 juror beginning on the eleventh day of jury service. In addition,  
631 for any jurors who qualify for payment by virtue of having served  
632 on a jury for more than ten (10) days, the court, upon finding  
633 that such service posed a significant financial hardship to a  
634 juror, even in light of payments made with respect to jury service  
635 after the tenth day, may award replacement or supplemental wages  
636 out of the Lengthy Trial Fund not to exceed One Hundred Dollars

637 (\$100.00) per day from the fourth to the tenth day of jury  
638 service.

639 (d) Any juror who is serving or has served on a jury  
640 that qualifies for payment from the Lengthy Trial Fund, provided  
641 the service commenced on or after January 1, 2007, may submit a  
642 request for payment from the Lengthy Trial Fund on a form that the  
643 administrator provides. Payment shall be limited to the  
644 difference between the jury fee specified in subsection (1) of  
645 this section and the actual amount of wages a juror earns, up to  
646 the maximum level payable, minus any amount the juror actually  
647 receives from the employer during the same time period.

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

653 (ii) The juror also shall be required to submit  
654 verification from the employer as to the wage information provided  
655 to the administrator, for example, the employee's most recent  
656 earnings statement or similar document, prior to initiation of  
657 payment from the fund.

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

663 (4) Nothing in this section shall be construed to impose an  
664 obligation on any county to place monies in the Lengthy Trial Fund  
665 or to pay replacement or supplemental wages to any juror from  
666 county funds.

667 **SECTION 13.** Section 33-1-5, Mississippi Code of 1972, is  
668 amended as follows:

669           33-1-5. Any member of the Mississippi National Guard on  
670 active duty shall be exempt from jury duty upon presenting a  
671 current written statement from his superior officer that such jury  
672 service will be likely to interfere with his military duties.

673           **SECTION 14.** (1) Notwithstanding any other provisions of  
674 this chapter, individuals scheduled to appear for jury service  
675 have the right to postpone the date of their initial appearance  
676 for jury service one (1) time only. Postponements shall be  
677 granted upon request, provided that:

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

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

683                   (c) Prior to the grant of a postponement with the  
684 concurrence of the clerk of the court, the prospective juror fixes  
685 a date certain to appear for jury service that is not more than  
686 six (6) months or two (2) terms of court after the date on which  
687 the prospective juror originally was called to serve and on which  
688 date the court will be in session, whichever is the longer period.

689           (2) A subsequent request to postpone jury service may be  
690 approved by a judicial officer only in the event of an extreme  
691 emergency, such as a death in the family, sudden illness, or a  
692 natural disaster or a national emergency in which the prospective  
693 juror is personally involved, that could not have been anticipated  
694 at the time the initial postponement was granted. Prior to the  
695 grant of a second postponement, the prospective juror must fix a  
696 date certain on which the individual will appear for jury service  
697 within six (6) months or two (2) terms of court after the  
698 postponement on a date when the court will be in session.

699           (3) The Administrative Office of Courts shall promulgate  
700 rules for the implementation of this section.

701           **SECTION 15.** (1) It shall be unlawful for any employer or  
702 any other person to persuade or attempt to persuade any juror to  
703 avoid jury service; to intimidate or to threaten any juror in that  
704 respect; or to remove or otherwise subject an employee to adverse  
705 employment action as a result of jury service if the employee  
706 notifies his or her employer that he or she has been summoned to  
707 serve as a juror within a reasonable period of time after receipt  
708 of a summons.

709           (2) It shall be unlawful for an employer to require or  
710 request an employee to use annual, vacation or sick leave for time  
711 spent responding to a summons for jury duty, time spent  
712 participating in the jury selection process, or time spent  
713 actually serving on a jury. Nothing in this provision shall be  
714 construed to require an employer to provide annual, vacation or  
715 sick leave to employees under the provisions of this statute who  
716 otherwise are not entitled to such benefits under company  
717 policies.

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

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

728           **SECTION 16.** Section 73-25-27, Mississippi Code of 1972, is  
729 amended as follows:

730           73-25-27. The Mississippi State Board of Medical Licensure  
731 after notice and opportunity for a hearing to the licentiate, is  
732 authorized to suspend or revoke for any cause named herein any  
733 license it has issued, or the renewal thereof, that authorizes any

734 person to practice medicine, osteopathy, or any other method of  
735 preventing, diagnosing, relieving, caring for, or treating, or  
736 curing disease, injury or other bodily condition. The procedure  
737 for suspension of a license for being out of compliance with an  
738 order for support, and the procedure for the reissuance or  
739 reinstatement of a license suspended for that purpose, and the  
740 payment of any fees for the reissuance or reinstatement of a  
741 license suspended for that purpose, shall be governed by Section  
742 93-11-157 or 93-11-163, as the case may be. If there is any  
743 conflict between any provision of Section 93-11-157 or 93-11-163  
744 and any provision of this chapter, the provisions of Section  
745 93-11-157 or 93-11-163, as the case may be, shall control.

746       Such notice shall be effected by registered mail or personal  
747 service setting forth the particular reasons for the proposed  
748 action and fixing a date not less than thirty (30) days or more  
749 than sixty (60) days from the date of such mailing or such  
750 service, at which time the licentiate shall be given an  
751 opportunity for a prompt and fair hearing. For the purpose of  
752 such hearing the board, acting by and through its executive  
753 office, may subpoena persons and papers on its own behalf and on  
754 behalf of licentiate, including records obtained pursuant to  
755 Section 73-25-28, may administer oaths and such testimony when  
756 properly transcribed, together with such papers and exhibits,  
757 shall be admissible in evidence for or against the licentiate. At  
758 such hearing licentiate may appear by counsel and personally in  
759 his own behalf. Any person sworn and examined as a witness in  
760 such hearing shall not be held to answer criminally, nor shall any  
761 papers or documents produced by such witness be competent evidence  
762 in any criminal proceedings against such witness other than for  
763 perjury in delivering his evidence. Any patient or the  
764 representative of the patient who has both filed a complaint with  
765 the Board of Medical Licensure against a licentiate and suffered  
766 harm to his person that is alleged in the complaint shall have the

767 right, subject to reasonable restrictions imposed by the Board of  
768 Medical Licensure, to attend any proceedings that determine  
769 substantive rights of a licentiate conducted by the Board of  
770 Medical Licensure for disciplinary purposes regarding the  
771 licentiate as to that patient's treatment. Notice shall be  
772 provided to the patient or his representative at the same time and  
773 in the same manner as the notice is made to the licentiate.  
774 Whether a patient has suffered harm shall be decided by the Board  
775 of Medical Licensure. On the basis of any such hearing, or upon  
776 default of the licentiate, the Board of Medical Licensure shall  
777 make a determination specifying its findings of fact and  
778 conclusions of law.

779 A copy of such determination shall be sent by registered mail  
780 or served personally upon the licentiate. The decision of the  
781 Board of Medical Licensure revoking or suspending the license  
782 shall become final thirty (30) days after so mailed or served  
783 unless within said period the licentiate appeals the decision to  
784 the chancery court, pursuant to the provisions hereof, and the  
785 proceedings in chancery shall be conducted as other matters coming  
786 before the court. All proceedings and evidence, together with  
787 exhibits, presented at such hearing before the Board of Medical  
788 Licensure in the event of appeal shall be admissible in evidence  
789 in said court.

790 The Board of Medical Licensure may subpoena persons and  
791 papers on its own behalf and on behalf of the respondent,  
792 including records obtained pursuant to Section 73-25-28, may  
793 administer oaths, and may compel the testimony of witnesses. It  
794 may issue commissions to take testimony, and testimony so taken  
795 and sworn to shall be admissible in evidence for and against the  
796 respondent. The Board of Medical Licensure shall be entitled to  
797 the assistance of the chancery court or the chancellor in  
798 vacation, which, on petition by the board, shall issue ancillary



799 subpoenas and petitions and may punish as for contempt of court in  
800 the event of noncompliance therewith.

801 Unless the court otherwise decrees, a license that has been  
802 suspended by the Board of Medical Licensure for a stated period of  
803 time shall automatically become valid on the expiration of that  
804 period and a license that has been suspended for an indefinite  
805 period shall become again valid if and when the Board of Medical  
806 Licensure so orders, which it may do on its own motion or on the  
807 petition of the respondent. A license that has been revoked shall  
808 not be restored to validity except: (1) after a rehearing by the  
809 Board of Medical Licensure, on petition of the respondent, for  
810 good cause shown, filed within ten (10) days, immediately  
811 following the service on him of the order or judgment of the Board  
812 of Medical Licensure revoking his license or (2) by order of the  
813 court, on petition as aforesaid. Any licentiate whose license  
814 becomes again valid after a period of suspension or after it has  
815 been restored to validity after a rehearing or by an order of the  
816 court, shall record it again in the office of the clerk of the  
817 circuit court of the county in which he resides in conformity with  
818 the requirements of Section 73-25-13. Nothing in this chapter  
819 shall be construed as limiting or revoking the authority of any  
820 court or of any licensing or registering officer or board, other  
821 than the State Board of Medical Licensure, to suspend, revoke and  
822 reinstate licenses and to cancel registrations under the  
823 provisions of Section 41-29-311.

824 **SECTION 17.** In any medical malpractice action with multiple  
825 defendants, the medical privilege shall be considered waived by  
826 and between all defendants.

827 **SECTION 18.** If the parties to a cause of action agree, any  
828 claim filed alleging damages may receive a bench trial which shall  
829 be conducted in two hundred seventy (270) days or less after the  
830 cause of action has been filed. The cause of action shall be a  
831 priority item in the court.

832           **SECTION 19.** If any provision of this act is held by a court  
833 to be invalid, such invalidity shall not affect the remaining  
834 provisions of this act, and to this end the provisions of this act  
835 are declared severable.

836           **SECTION 20.** Sections 8 through 15 of this act shall take  
837 effect and be in force from and after January 1, 2007; the  
838 remainder of this act shall take effect and be in force from and  
839 after September 1, 2004, and Sections 1 through 7 of this act  
840 shall apply to all causes of action filed on or after September 1,  
841 2004.