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To: Judiciary, Division A

SENATE BILL NO. 2001

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE VENUE IN GENERAL CIVIL ACTIONS; TO AMEND SECTION
3 11-1-60, MISSISSIPPI CODE OF 1972, TO PROVIDE LIMITATIONS ON
4 NONECONOMIC DAMAGES IN ALL CIVIL ACTIONS; TO AMEND SECTION
5 11-1-63, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PRODUCT
6 SELLER OTHER THAN A MANUFACTURER SHALL NOT BE LIABLE FOR A LATENT
7 DEFECT IF THE SELLER IS A MERE CONDUIT WHO PURCHASED THE PRODUCT
8 FROM A REPUTABLE MANUFACTURER; TO AMEND SECTION 11-1-65,
9 MISSISSIPPI CODE OF 1972, TO PROHIBIT MULTIPLE PUNITIVE DAMAGE
10 AWARDS FOR THE SAME CONDUCT OF A DEFENDANT EXCEPT IN CERTAIN
11 CASES, TO PROHIBIT PUNITIVE DAMAGES AGAINST A DEFENDANT FOR ANY
12 REGULATED ACTIVITY CONDUCTED IN COMPLIANCE WITH FEDERAL AND STATE
13 REGULATIONS, AND TO REVISE THE MAXIMUM AMOUNT OF PUNITIVE DAMAGE
14 AWARDS; TO AMEND SECTION 11-1-66, MISSISSIPPI CODE OF 1972, TO
15 REVISE THE IMMUNITY OF PREMISES OWNERS FROM CIVIL LIABILITY; TO
16 AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE THE
17 LIMITATION OF JOINT AND SEVERAL LIABILITY FOR DAMAGES CAUSED BY
18 TWO OR MORE PERSONS; TO REPEAL SECTION 11-1-64, MISSISSIPPI CODE
19 OF 1972, WHICH PROVIDES THE PROCEDURE FOR DISMISSING A DEFENDANT
20 WHOSE LIABILITY IS BASED SOLELY ON HIS STATUS AS A SELLER IN THE
21 STREAM OF COMMERCE; TO AMEND SECTION 13-5-1, MISSISSIPPI CODE OF
22 1972, TO ELIMINATE CERTAIN JUROR DISQUALIFICATIONS; TO AMEND
23 SECTION 13-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURORS
24 CAN ONLY BE EXCUSED FROM SERVICE FOR ILLNESS OR UNDUE HARDSHIP; TO
25 CODIFY SECTION 13-5-24, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
26 JURORS CAN POSTPONE JURY SERVICE ONE TIME ONLY; TO AMEND SECTION
27 13-5-25, MISSISSIPPI CODE OF 1972, TO LIMIT THE FREQUENCY OF JURY
28 SERVICE; TO AMEND SECTION 13-5-28, MISSISSIPPI CODE OF 1972, TO
29 REQUIRE NOTICE OF JURY SERVICE EXEMPTION ENTITLEMENT TO BE
30 INCLUDED IN JUROR SUMMONSES; TO AMEND SECTION 13-5-34, MISSISSIPPI
31 CODE OF 1972, TO REVISE THE PUNISHMENT FOR FAILURE TO APPEAR FOR
32 JURY SERVICE; TO CODIFY SECTION 13-5-99, MISSISSIPPI CODE OF 1972,
33 TO PROVIDE EMPLOYMENT PROTECTIONS FOR JURORS; TO AMEND SECTION
34 25-7-61, MISSISSIPPI CODE OF 1972, TO CREATE A LENGTHY TRIAL FUND;
35 TO AMEND SECTION 33-1-5, MISSISSIPPI CODE OF 1972, TO ELIMINATE
36 CERTAIN JUROR EXEMPTIONS; TO REPEAL SECTIONS 41-17-7 AND 47-5-55,
37 MISSISSIPPI CODE OF 1972, WHICH PROVIDE CERTAIN EXEMPTIONS FROM
38 JURY SERVICE; TO PROVIDE THAT ALL MALPRACTICE CLAIMS SHALL BE
39 REVIEWED BY A MEDICAL REVIEW PANEL; TO ALLOW PARTIES TO MUTUALLY
40 AGREE TO OPT OUT OF THIS REQUIREMENT; TO ESTABLISH THE MEMBERSHIP
41 REVIEW PANEL; TO PROVIDE WHAT EVIDENCE MAY BE CONSIDERED BY THE
42 PANEL; TO PROVIDE THE FORM OF THE DECISION; TO PROVIDE FOR
43 PANELIST IMMUNITY AND COMPENSATION; TO PROVIDE THAT THE LOSING
44 PARTY SHALL PAY ATTORNEY FEES TO THE PREVAILING PARTY UNDER
45 CERTAIN CIRCUMSTANCES; TO AMEND SECTION 11-46-19, MISSISSIPPI CODE
46 OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

140 * * *

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

145 (3) (a) Regardless of the number of parties against whom an
146 action is brought or the number of separate claims or actions
147 brought with respect to the same injury, for causes of action
148 filed on or after July 1, 2004, the aggregate amount recoverable

149 for noneconomic damages by a plaintiff in any claim for injury
150 shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00).

151 (b) The jury shall not be advised of the limitations
152 imposed by this subsection (3), and the judge shall appropriately
153 reduce any award of noneconomic damages that exceeds the
154 applicable limitation.

155 * * *

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

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

160 11-1-63. * * * In any action for damages caused by a product
161 except for commercial damage to the product itself:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

283 11-1-65. (1) For the purposes of this section,
284 "compensatory" means the amount of money awarded to a party for
285 the party's actual damages, whether economic or noneconomic.

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

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

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

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

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

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

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

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

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

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

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

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

351 3. In mitigation, the financial condition and
352 net worth of the defendant; and

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

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

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

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

375 (ii) Seven Million Five Hundred Thousand Dollars
376 (\$7,500,000.00) for a defendant with a net worth of more than
377 Seven Hundred Fifty Million Dollars (\$750,000,000.00) but not more
378 than One Billion Dollars (\$1,000,000,000.00);

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

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

387 (v) Two Million Five Hundred Thousand Dollars
388 (\$2,500,000.00) for a defendant with a net worth of more than
389 Fifty Million Dollars (\$50,000,000.00) but not more than One
390 Hundred Million Dollars (\$100,000,000.00); or

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

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

398 (c) The limitation on the amount of punitive damages
399 imposed by this subsection (4) shall not be disclosed to the trier
400 of fact, but shall be applied by the court to any punitive damages
401 verdict.

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

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

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

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

414 * * *

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

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

424 * * *

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

427 11-1-66. (1) No owner, occupant, lessee or managing agent
428 of property shall be civilly liable for failing to prevent or
429 failing to deter any act or omission committed by another person
430 upon the property or premises that is a reckless, wanton,
431 intentionally wrongful, illegal or criminal act.

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

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

439 85-5-7. (1) As used in this section, "fault" means an act
440 or omission of a person which is a proximate cause of injury or
441 death to another person or persons, damages to property, tangible
442 or intangible, or economic injury, including, but not limited to,
443 negligence, malpractice, strict liability, absolute liability or
444 failure to warn. "Fault" shall not include any tort which results
445 from an act or omission committed with a specific wrongful intent.

446 * * *

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

458 * * *

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

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

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

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

475 * * *

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

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

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

485 13-5-1. Every citizen not under the age of twenty-one (21)
486 years, who is either a qualified elector, or a resident freeholder
487 of the county for more than one (1) year, is able to read and
488 write, and has not been convicted of a felony within the past ten
489 (10) years is a competent juror. * * * The lack of any such
490 qualifications on the part of one or more jurors shall not,
491 however, vitiate an indictment or verdict. Moreover, * * * no
492 juror shall serve on any jury who has served as such for the last
493 preceding two (2) years. No juror * * * who has a case of his own
494 pending in that court * * * shall serve in his own case.

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

499 "1. Your name _____ Last _____ First _____ Middle
500 initial

501 2. Your home address _____

502 3. Your occupation _____

503 4. Your age _____

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

505 6. If you live outside the county seat, the number of miles
506 you live from the courthouse _____ miles
507 _____

508 Sign your name"

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

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

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

518 13-5-23. (1) All qualified persons shall be liable to serve
519 as jurors, unless excused by the court for one (1) of the
520 following causes:

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

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

526 * * *

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

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

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

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

547 (iii) Suffer physical hardship that would result
548 in illness or disease.

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

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

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

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

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

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

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

581 13-5-24. (1) Notwithstanding any other provisions of this
582 chapter, individuals scheduled to appear for jury service have the
583 right to postpone the date of their initial appearance for jury
584 service one (1) time only. Postponements shall be granted upon
585 request, provided that:

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

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

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

597 (2) A subsequent request to postpone jury service may be
598 approved by a judicial officer only in the event of an extreme
599 emergency, such as a death in the family, sudden illness, or a
600 natural disaster or a national emergency in which the prospective
601 juror is personally involved, that could not have been anticipated

602 at the time the initial postponement was granted. Prior to the
603 grant of a second postponement, the prospective juror must fix a
604 date certain on which the individual will appear for jury service
605 within six (6) months of the postponement on a date when the court
606 will be in session.

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

609 13-5-25. Every citizen over sixty-five (65) years of age,
610 and everyone who has served on the regular panel as a juror in the
611 actual trial of one or more litigated cases within two (2) years,
612 shall be exempt from service if he claims the privilege * * *. No
613 qualified juror shall be excluded because of any such reasons, but
614 the same shall be a personal privilege to be claimed by any person
615 selected for jury duty. Any citizen over sixty-five (65) years of
616 age may claim this personal privilege outside of open court by
617 providing the clerk of court with information that allows the
618 clerk to determine the validity of the claim.

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

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

625 13-5-28. If a grand, petit or other jury is ordered to be
626 drawn, the clerk thereafter shall cause each person drawn for jury
627 service to be served with a summons, either personally or by mail,
628 addressed to him at his usual residence, business or post office
629 address, requiring him to report for jury service at a specified
630 time and place. The summons shall include instructions to the
631 potential jurors that explain, in layman's terms, the provisions
632 of Section 13-5-23.

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

635 13-5-34. (1) A person summoned for jury service who fails
636 to appear or to complete jury service as directed, and who has
637 failed to obtain a postponement in compliance with the provisions
638 for requesting a postponement, or who fails to appear on the date
639 set pursuant to Section 13-5-24 shall be ordered by the court to
640 appear forthwith and show cause for his failure to comply with the
641 summons. If he fails to show good cause for noncompliance with
642 the summons he is in civil contempt of court and * * * may be
643 fined not more than Five Hundred Dollars (\$500.00) or imprisoned
644 not more than three (3) days, or both. The prospective juror may
645 be excused from paying sanctions for good cause shown or in the
646 interest of justice.

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

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

655 13-5-99. (1) It shall be unlawful for any employer or any
656 other person to persuade or attempt to persuade any juror to avoid
657 jury service; to intimidate or to threaten any juror in that
658 respect; or to remove or otherwise subject an employee to adverse
659 employment action as a result of jury service if the employee
660 notifies his or her employer that he or she has been summoned to
661 serve as a juror within a reasonable period of time after receipt
662 of a summons.

663 (2) It shall be unlawful for an employer to require or
664 request an employee to use annual, vacation or sick leave for time
665 spent responding to a summons for jury duty, time spent
666 participating in the jury selection process, or time spent
667 actually serving on a jury. Nothing in this provision shall be

668 construed to require an employer to provide annual, vacation or
669 sick leave to employees under the provisions of this statute who
670 otherwise are not entitled to such benefits under company
671 policies.

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

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

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

684 25-7-61. (1) Fees of jurors shall be payable as follows:

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

694 No grand juror shall receive any compensation except mileage
695 unless he shall have been sworn as provided by Section 13-5-45;
696 and no petit juror except those jurors called on special venires
697 shall receive any compensation authorized under this subsection
698 except mileage unless he shall have been sworn as provided by
699 Section 13-5-71.

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

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

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

719 (a) The local public library;

720 (b) Local law enforcement;

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

723 (d) Any other governmental agency.

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

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

729 (i) The selection and appointment of an
730 administrator for the fund.

731 (ii) Procedures for the administration of the
732 fund, including payments of salaries of the administrator and
733 other necessary personnel.

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

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

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

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

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

763 amount the juror actually receives from the employer during the
764 same time period.

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

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

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

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

782 33-1-5. Any member of the Mississippi National Guard on
783 active duty shall be exempt from jury duty upon presenting a
784 current written statement from his superior officer that such jury
785 service will be likely to interfere with his military duties.

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

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

792 **SECTION 19. Medical review panel.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

940 (4) **Evidence.**

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

944 (b) The evidence may consist of:

945 (i) Medical records;

946 (ii) Sworn statements;

947 (iii) Expert reports signed by experts;

948 (iv) Deposition transcripts;

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

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

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

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

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

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

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

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

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

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

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

990 with written reasons for their conclusions, as follows:

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

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

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

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

1001 (8) **Panelist immunity.** A panelist shall have absolute
1002 immunity from civil liability for all communications, findings,
1003 opinions and conclusions made in the course and scope of duties
1004 prescribed by this section.

1005 (9) **Panelist compensation.**

1006 (a) (i) Each physician member of the medical review
1007 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for
1008 all work performed as a member of the panel, and in addition
1009 thereto, per diem as provided in Section 25-3-69, Mississippi Code
1010 of 1972, and travel expenses as would be calculated for a state
1011 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1012 (ii) The attorney chairman of the medical review
1013 panel shall be paid at the rate of One Hundred Fifty Dollars
1014 (\$150.00) per hour, not to exceed a total of Three Thousand
1015 Dollars (\$3,000.00), for all work performed as a member of the
1016 panel, and in addition thereto, per diem as provided in Section
1017 25-3-69, Mississippi Code of 1972, and travel expenses as would be
1018 calculated for a state employee pursuant to Section 25-3-41,
1019 Mississippi Code of 1972.

1020 (b) The costs of the medical review panel shall be
1021 split between the parties. The panel members shall by affidavit
1022 request the payment due under this subsection (9) from the board,

1023 which in turn shall bill the parties for the proportionate share
1024 of each party.

1025 (10) **Delivery and effect of decision.** The chairman shall
1026 submit a copy of the panel's report to the board and all parties
1027 and attorneys by registered or certified mail within five (5) days
1028 after the panel renders its opinion. The panel's report shall be
1029 of public record.

1030 (11) **Allocation of attorney fees and expenses.**

1031 (a) If the decision of the panel finds for the
1032 defendant and the defendant prevails in court, the plaintiff shall
1033 pay reasonable attorney fees and expenses of the defendant to be
1034 determined by the court.

1035 (b) If the decision of the panel finds for the
1036 plaintiff:

1037 (i) The plaintiff may submit a written settlement
1038 offer for a sum certain to the defendant. If the defendant
1039 rejects the settlement offer, the plaintiff prevails in court, and
1040 the judgment is equal to or greater than the settlement offer, the
1041 defendant shall pay reasonable attorney fees and expenses of the
1042 plaintiff to be determined by the court.

1043 (ii) The defendant also may submit a written
1044 settlement offer for a sum certain to the plaintiff. If the
1045 plaintiff rejects the settlement offer and the defendant prevails
1046 in the subsequent court action, or the plaintiff prevails but the
1047 judgment is less than the defendant's settlement offer, the
1048 plaintiff shall pay reasonable attorney fees and expenses of the
1049 defendant to be determined by the court.

1050 **SECTION 20.** Section 11-46-19, Mississippi Code of 1972, is
1051 amended as follows:

1052 **[Until July 1, 2005, this section shall read as follows:]**

1053 11-46-19. (1) The board shall have the following powers:

1054 (a) To provide oversight over the Tort Claims Fund;

1055 (b) To approve any award made from the Tort Claims
1056 Fund;

1057 (c) To pay all necessary expenses attributable to the
1058 operation of the Tort Claims Fund from such fund;

1059 (d) To assign litigated claims against governmental
1060 entities other than political subdivisions to competent attorneys
1061 unless such governmental entity has a staff attorney who is
1062 competent to represent the governmental entity and is approved by
1063 the board; the board shall give primary consideration to attorneys
1064 practicing in the jurisdiction where the claim arose in assigning
1065 cases; attorneys hired to represent a governmental entity other
1066 than a political subdivision shall be paid according to the
1067 department fee schedule;

1068 (e) To approve all claimants' attorney fees in claims
1069 against the state;

1070 (f) To employ on a full-time basis a staff attorney who
1071 shall possess the minimum qualifications required to be a member
1072 of The Mississippi Bar, and such other staff as it may deem
1073 necessary to carry out the purposes of this chapter; the employees
1074 in the positions approved by the board shall be hired by the
1075 director, shall be employees of the department, and shall be
1076 compensated from the Tort Claims Fund;

1077 (g) To contract with one or more reputable insurance
1078 consulting firms as may be necessary;

1079 (h) To purchase any policies of liability insurance and
1080 to administer any plan of self-insurance or policies of liability
1081 insurance required for the protection of the state against claims
1082 and suits brought under this chapter;

1083 (i) To expend money from the Tort Claims Fund for the
1084 purchase of any policies of liability insurance and the payment of
1085 any award or settlement of a claim against the state under the
1086 provisions of this chapter or of a claim against any school
1087 district, junior college or community college district, or state

1088 agency, arising from the operation of school buses or other
1089 vehicles, under the provisions of Section 37-41-42;

1090 (j) To cancel, modify or replace any policy or policies
1091 of liability insurance procured by the board;

1092 (k) To issue certificates of coverage to governmental
1093 entities, including any political subdivision participating in any
1094 plan of liability protection approved by the board;

1095 (l) To review and approve or reject any plan of
1096 liability insurance or self-insurance reserves proposed or
1097 provided by political subdivisions if such plan is intended to
1098 serve as security for risks of claims and suits against them for
1099 which immunity has been waived under this chapter;

1100 (m) To administer disposition of claims against the
1101 Tort Claims Fund;

1102 (n) To withhold issuance of any warrants payable from
1103 funds of a participating state entity should such entity fail to
1104 make required contributions to the Tort Claims Fund in the time
1105 and manner prescribed by the board;

1106 (o) To develop a comprehensive statewide list of
1107 attorneys who are qualified to represent the state and any
1108 employee thereof named as a defendant in a claim brought under
1109 this chapter against the state or such employee;

1110 (p) To develop a schedule of fees for paying attorneys
1111 defending claims against the state or an employee thereof;

1112 (q) To adopt and promulgate such reasonable rules and
1113 regulations and to do and perform all such acts as are necessary
1114 to carry out its powers and duties under this chapter;

1115 (r) To establish and assess premiums to be paid by
1116 governmental entities required to participate in the Tort Claims
1117 Fund;

1118 (s) To contract with a third-party administrator to
1119 process claims against the state under this chapter;

1120 (t) To annually submit its budget request to the
1121 Legislature as a state agency;

1122 (u) To dispose of salvage obtained in settlement or
1123 payment of any claim at fair market value by such means and upon
1124 such terms as the board may think best; * * *

1125 (v) To administer the Medical Malpractice Insurance
1126 Availability Plan under Section 83-48-5; and

1127 (w) To act as the board as required under Senate Bill
1128 No. _____, 2004 First Extraordinary Session, dealing with medical
1129 malpractice claims as follows:

1130 (i) To accept filings under the act;

1131 (ii) To coordinate the selection of panels;

1132 (iii) To maintain lists of attorneys eligible for
1133 appointment as attorney chairmen;

1134 (iv) To promulgate rules in reference to the
1135 qualifications of attorneys serving as panel members;

1136 (v) To promulgate rules and regulations necessary
1137 to implement the provisions of Section 19 of Senate Bill No. _____,
1138 2004 First Extraordinary Session; and

1139 (vi) To provide general administrative support.

1140 (2) Policies of liability insurance purchased for the
1141 protection of governmental entities against claims and suits
1142 brought under this chapter shall be purchased pursuant to the
1143 competitive bidding procedures set forth in Section 31-7-13.

1144 (3) The department shall have the following powers and
1145 duties:

1146 (a) To annually report to the Legislature concerning
1147 each comprehensive plan of liability protection established
1148 pursuant to Section 11-46-17(2). Such report shall include a
1149 comprehensive analysis of the cost of the plan, a breakdown of the
1150 cost to participating state entities, and such other information
1151 as the department may deem necessary.

1152 (b) To provide the board with any staff and meeting
1153 facilities as may be necessary to carry out the duties of the
1154 board as provided in this chapter.

1155 (c) To submit the board's budget request for the
1156 initial year of operation of the board in order to authorize
1157 expenditures for the 1993-1994 fiscal year and for the
1158 appropriation of such general funds as shall be required for the
1159 commencement of its activities.

1160 **[From and after July 1, 2005, this section shall read as**
1161 **follows:]**

1162 11-46-19. (1) The board shall have the following powers:

1163 (a) To provide oversight over the Tort Claims Fund;

1164 (b) To approve any award made from the Tort Claims
1165 Fund;

1166 (c) To pay all necessary expenses attributable to the
1167 operation of the Tort Claims Fund from such fund;

1168 (d) To assign litigated claims against governmental
1169 entities other than political subdivisions to competent attorneys
1170 unless such governmental entity has a staff attorney who is
1171 competent to represent the governmental entity and is approved by
1172 the board; the board shall give primary consideration to attorneys
1173 practicing in the jurisdiction where the claim arose in assigning
1174 cases; attorneys hired to represent a governmental entity other
1175 than a political subdivision shall be paid according to the
1176 department fee schedule;

1177 (e) To approve all claimants' attorney fees in claims
1178 against the state;

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

1184 director, shall be employees of the department, and shall be
1185 compensated from the Tort Claims Fund;

1186 (g) To contract with one or more reputable insurance
1187 consulting firms as may be necessary;

1188 (h) To purchase any policies of liability insurance and
1189 to administer any plan of self-insurance or policies of liability
1190 insurance required for the protection of the state against claims
1191 and suits brought under this chapter;

1192 (i) To expend money from the Tort Claims Fund for the
1193 purchase of any policies of liability insurance and the payment of
1194 any award or settlement of a claim against the state under the
1195 provisions of this chapter or of a claim against any school
1196 district, junior college or community college district, or state
1197 agency, arising from the operation of school buses or other
1198 vehicles, under the provisions of Section 37-41-42;

1199 (j) To cancel, modify or replace any policy or policies
1200 of liability insurance procured by the board;

1201 (k) To issue certificates of coverage to governmental
1202 entities, including any political subdivision participating in any
1203 plan of liability protection approved by the board;

1204 (l) To review and approve or reject any plan of
1205 liability insurance or self-insurance reserves proposed or
1206 provided by political subdivisions if such plan is intended to
1207 serve as security for risks of claims and suits against them for
1208 which immunity has been waived under this chapter;

1209 (m) To administer disposition of claims against the
1210 Tort Claims Fund;

1211 (n) To withhold issuance of any warrants payable from
1212 funds of a participating state entity should such entity fail to
1213 make required contributions to the Tort Claims Fund in the time
1214 and manner prescribed by the board;

1215 (o) To develop a comprehensive statewide list of
1216 attorneys who are qualified to represent the state and any

1217 employee thereof named as a defendant in a claim brought under
1218 this chapter against the state or such employee;

1219 (p) To develop a schedule of fees for paying attorneys
1220 defending claims against the state or an employee thereof;

1221 (q) To adopt and promulgate such reasonable rules and
1222 regulations and to do and perform all such acts as are necessary
1223 to carry out its powers and duties under this chapter;

1224 (r) To establish and assess premiums to be paid by
1225 governmental entities required to participate in the Tort Claims
1226 Fund;

1227 (s) To contract with a third-party administrator to
1228 process claims against the state under this chapter;

1229 (t) To annually submit its budget request to the
1230 Legislature as a state agency;

1231 (u) To dispose of salvage obtained in settlement or
1232 payment of any claim at fair market value by such means and upon
1233 such terms as the board may think best; and

1234 * * *

1235 (v) To act as the board as required under Senate Bill
1236 No. _____, 2004 First Extraordinary Session, dealing with medical
1237 malpractice claims as follows:

1238 (i) To accept filings under the act;

1239 (ii) To coordinate the selection of panels;

1240 (iii) To maintain lists of attorneys eligible for
1241 appointment as attorney chairmen;

1242 (iv) To promulgate rules in reference to the
1243 qualifications of attorneys serving as panel members;

1244 (v) To promulgate rules and regulations necessary
1245 to implement the provisions of Section 19 of Senate Bill No. _____,
1246 2004 First Extraordinary Session; and

1247 (vi) To provide general administrative support.

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1249 protection of governmental entities against claims and suits

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1251 competitive bidding procedures set forth in Section 31-7-13.

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1253 duties:

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

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

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

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

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