

By: Senator(s) Ross, Brown, Burton, Carmichael, Chaney, Clarke, Flowers, Hewes, Hyde-Smith, Jackson (15th), King, Kirby, Little, Mettetal, Michel, Moffatt, Morgan, Nunnelee, Pickering, Robertson, Browning, Lee (35th)

To: Judiciary, Division A

SENATE BILL NO. 2001  
(As Passed the Senate)

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

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

423 \* \* \*

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

426 11-1-66. (1) No owner, occupant, lessee or managing agent  
427 of property shall be civilly liable for failing to prevent or  
428 failing to deter any act or omission committed by another person  
429 upon the property or premises that is a reckless, wanton,  
430 intentionally wrongful, illegal or criminal act.

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

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

438           85-5-7. (1) As used in this section, "fault" means an act  
439 or omission of a person which is a proximate cause of injury or  
440 death to another person or persons, damages to property, tangible  
441 or intangible, or economic injury, including, but not limited to,  
442 negligence, malpractice, strict liability, absolute liability or  
443 failure to warn. "Fault" shall not include any tort which results  
444 from an act or omission committed with a specific wrongful intent.

445       \* \* \*

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

457       \* \* \*

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

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

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

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

474 \* \* \*

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

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

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

484 13-5-1. Every citizen not under the age of twenty-one (21)  
485 years, who is either a qualified elector, or a resident freeholder  
486 of the county for more than one (1) year, is able to read and  
487 write, and has not been convicted of a felony is a competent  
488 juror. \* \* \* The lack of any such qualifications on the part of  
489 one or more jurors shall not, however, vitiate an indictment or  
490 verdict. Moreover, \* \* \* no juror shall serve on any jury who has  
491 served as such for the last preceding two (2) years. No  
492 juror \* \* \* who has a case of his own pending in that court \* \* \*  
493 shall serve in his own case.

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

498 "1. Your name \_\_\_\_\_ Last \_\_\_\_\_ First \_\_\_\_\_ Middle  
499 initial

500 2. Your home address \_\_\_\_\_

501 3. Your occupation \_\_\_\_\_

502 4. Your age \_\_\_\_\_

503 5. Your telephone number \_\_\_\_\_ If none, write 'None'

504           6. If you live outside the county seat, the number of miles  
505 you live from the courthouse \_\_\_\_\_ miles  
506 \_\_\_\_\_

507       Sign your name"

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

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

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

517           13-5-23. (1) All qualified persons shall be liable to serve  
518 as jurors, unless excused by the court for one (1) of the  
519 following causes:

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

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

525       \* \* \*

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



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

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

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

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

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

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

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

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

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

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

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

580       13-5-24. (1) Notwithstanding any other provisions of this  
581 chapter, individuals scheduled to appear for jury service have the  
582 right to postpone the date of their initial appearance for jury  
583 service one (1) time only. Postponements shall be granted upon  
584 request, provided that:

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

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

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

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

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

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

608 13-5-25. Every citizen over sixty-five (65) years of age,  
609 and everyone who has served on the regular panel as a juror in the  
610 actual trial of one or more litigated cases within two (2) years,  
611 shall be exempt from service if he claims the privilege \* \* \*. No  
612 qualified juror shall be excluded because of any such reasons, but  
613 the same shall be a personal privilege to be claimed by any person  
614 selected for jury duty. Any citizen over sixty-five (65) years of  
615 age may claim this personal privilege outside of open court by  
616 providing the clerk of court with information that allows the  
617 clerk to determine the validity of the claim.

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

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

624 13-5-28. If a grand, petit or other jury is ordered to be  
625 drawn, the clerk thereafter shall cause each person drawn for jury  
626 service to be served with a summons, either personally or by mail,  
627 addressed to him at his usual residence, business or post office  
628 address, requiring him to report for jury service at a specified  
629 time and place. The summons shall include instructions to the  
630 potential jurors that explain, in layman's terms, the provisions  
631 of Section 13-5-23.

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

634           13-5-34. (1) A person summoned for jury service who fails  
635 to appear or to complete jury service as directed, and who has  
636 failed to obtain a postponement in compliance with the provisions  
637 for requesting a postponement, or who fails to appear on the date  
638 set pursuant to Section 13-5-24 shall be ordered by the court to  
639 appear forthwith and show cause for his failure to comply with the  
640 summons. If he fails to show good cause for noncompliance with  
641 the summons he is in civil contempt of court and \* \* \* may be  
642 fined not more than Five Hundred Dollars (\$500.00) or imprisoned  
643 not more than three (3) days, or both. The prospective juror may  
644 be excused from paying sanctions for good cause shown or in the  
645 interest of justice.

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

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

654           13-5-99. (1) It shall be unlawful for any employer or any  
655 other person to persuade or attempt to persuade any juror to avoid  
656 jury service; to intimidate or to threaten any juror in that  
657 respect; or to remove or otherwise subject an employee to adverse  
658 employment action as a result of jury service if the employee  
659 notifies his or her employer that he or she has been summoned to  
660 serve as a juror within a reasonable period of time after receipt  
661 of a summons.

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

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

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

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

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

683 25-7-61. (1) Fees of jurors shall be payable as follows:

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

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

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

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

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

718                   (a) The local public library;

719                   (b) Local law enforcement;

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

722                   (d) Any other governmental agency.

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

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

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

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

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

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

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

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

754                   (d) Any juror who is serving or has served on a jury  
755 that qualifies for payment from the Lengthy Trial Fund, provided  
756 the service commenced on or after the effective date of Senate  
757 Bill No. 2001, 2004 First Extraordinary Session, may submit a  
758 request for payment from the Lengthy Trial Fund on a form that the  
759 administrator provides. Payment shall be limited to the  
760 difference between the state-paid jury fee and the actual amount  
761 of wages a juror earns, up to the maximum level payable, minus any

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

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

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

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

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

781 33-1-5. Any member of the Mississippi National Guard on  
782 active duty shall be exempt from jury duty upon presenting a  
783 current written statement from his superior officer that such jury  
784 service will be likely to interfere with his military duties.

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

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

791 **SECTION 19. Medical review panel.**

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

939 (4) **Evidence.**

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

943 (b) The evidence may consist of:

944 (i) Medical records;

945 (ii) Sworn statements;

946 (iii) Expert reports signed by experts;

947 (iv) Deposition transcripts;

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

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

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

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

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

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

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

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

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

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

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

989 with written reasons for their conclusions, as follows:

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

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

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

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

1000 (8) **Panelist immunity.** A panelist shall have absolute  
1001 immunity from civil liability for all communications, findings,  
1002 opinions and conclusions made in the course and scope of duties  
1003 prescribed by this section.

1004 (9) **Panelist compensation.**

1005 (a) (i) Each physician member of the medical review  
1006 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for  
1007 all work performed as a member of the panel, and in addition  
1008 thereto, per diem as provided in Section 25-3-69, Mississippi Code  
1009 of 1972, and travel expenses as would be calculated for a state  
1010 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1011 (ii) The attorney chairman of the medical review  
1012 panel shall be paid at the rate of One Hundred Fifty Dollars  
1013 (\$150.00) per hour, not to exceed a total of Three Thousand  
1014 Dollars (\$3,000.00), for all work performed as a member of the  
1015 panel, and in addition thereto, per diem as provided in Section  
1016 25-3-69, Mississippi Code of 1972, and travel expenses as would be  
1017 calculated for a state employee pursuant to Section 25-3-41,  
1018 Mississippi Code of 1972.

1019 (b) The costs of the medical review panel shall be  
1020 split between the parties. The panel members shall by affidavit  
1021 request the payment due under this subsection (9) from the board,

1022 which in turn shall bill the parties for the proportionate share  
1023 of each party.

1024       (10) **Delivery and effect of decision.** The chairman shall  
1025 submit a copy of the panel's report to the board and all parties  
1026 and attorneys by registered or certified mail within five (5) days  
1027 after the panel renders its opinion. The panel's report shall be  
1028 of public record.

1029       (11) **Allocation of attorney fees and expenses.**

1030           (a) If the decision of the panel finds for the  
1031 defendant and the defendant prevails in court, the plaintiff shall  
1032 pay reasonable attorney fees and expenses of the defendant to be  
1033 determined by the court.

1034           (b) If the decision of the panel finds for the  
1035 plaintiff:

1036               (i) The plaintiff may submit a written settlement  
1037 offer for a sum certain to the defendant. If the defendant  
1038 rejects the settlement offer, the plaintiff prevails in court, and  
1039 the judgment is equal to or greater than the settlement offer, the  
1040 defendant shall pay reasonable attorney fees and expenses of the  
1041 plaintiff to be determined by the court.

1042               (ii) The defendant also may submit a written  
1043 settlement offer for a sum certain to the plaintiff. If the  
1044 plaintiff rejects the settlement offer and the defendant prevails  
1045 in the subsequent court action, or the plaintiff prevails but the  
1046 judgment is less than the defendant's settlement offer, the  
1047 plaintiff shall pay reasonable attorney fees and expenses of the  
1048 defendant to be determined by the court.

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

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

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

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



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

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

1058                   (d) To assign litigated claims against governmental  
1059 entities other than political subdivisions to competent attorneys  
1060 unless such governmental entity has a staff attorney who is  
1061 competent to represent the governmental entity and is approved by  
1062 the board; the board shall give primary consideration to attorneys  
1063 practicing in the jurisdiction where the claim arose in assigning  
1064 cases; attorneys hired to represent a governmental entity other  
1065 than a political subdivision shall be paid according to the  
1066 department fee schedule;

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

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

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

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

1082                   (i) To expend money from the Tort Claims Fund for the  
1083 purchase of any policies of liability insurance and the payment of  
1084 any award or settlement of a claim against the state under the  
1085 provisions of this chapter or of a claim against any school  
1086 district, junior college or community college district, or state

1087 agency, arising from the operation of school buses or other  
1088 vehicles, under the provisions of Section 37-41-42;

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

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

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

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

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

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

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

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

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

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

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

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

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

1126 (w) To act as the board as required under Senate Bill  
1127 No. 2001, 2004 First Extraordinary Session, dealing with medical  
1128 malpractice claims as follows:

1129 (i) To accept filings under the act;

1130 (ii) To coordinate the selection of panels;

1131 (iii) To maintain lists of attorneys eligible for  
1132 appointment as attorney chairmen;

1133 (iv) To promulgate rules in reference to the  
1134 qualifications of attorneys serving as panel members;

1135 (v) To promulgate rules and regulations necessary  
1136 to implement the provisions of Section 19 of Senate Bill No. 2001,  
1137 2004 First Extraordinary Session; and

1138 (vi) To provide general administrative support.

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

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

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

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

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

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

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

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

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

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

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

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

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

1183 director, shall be employees of the department, and shall be  
1184 compensated from the Tort Claims Fund;

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

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

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

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

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

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

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

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

1214 (o) To develop a comprehensive statewide list of  
1215 attorneys who are qualified to represent the state and any

1216 employee thereof named as a defendant in a claim brought under  
1217 this chapter against the state or such employee;

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

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

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

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

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

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

1233 \* \* \*

1234 (v) To act as the board as required under Senate Bill  
1235 No. 2001, 2004 First Extraordinary Session, dealing with medical  
1236 malpractice claims as follows:

1237 (i) To accept filings under the act;

1238 (ii) To coordinate the selection of panels;

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

1241 (iv) To promulgate rules in reference to the  
1242 qualifications of attorneys serving as panel members;

1243 (v) To promulgate rules and regulations necessary  
1244 to implement the provisions of Section 19 of Senate Bill No. 2001,  
1245 2004 First Extraordinary Session; and

1246 (vi) To provide general administrative support.

1247 (2) Policies of liability insurance purchased for the  
1248 protection of governmental entities against claims and suits

1249 brought under this chapter shall be purchased pursuant to the  
1250 competitive bidding procedures set forth in Section 31-7-13.

1251 (3) The department shall have the following powers and  
1252 duties:

1253 (a) To annually report to the Legislature concerning  
1254 each comprehensive plan of liability protection established  
1255 pursuant to Section 11-46-17(2). Such report shall include a  
1256 comprehensive analysis of the cost of the plan, a breakdown of the  
1257 cost to participating state entities, and such other information  
1258 as the department may deem necessary.

1259 (b) To provide the board with any staff and meeting  
1260 facilities as may be necessary to carry out the duties of the  
1261 board as provided in this chapter.

1262 (c) To submit the board's budget request for the  
1263 initial year of operation of the board in order to authorize  
1264 expenditures for the 1993-1994 fiscal year and for the  
1265 appropriation of such general funds as shall be required for the  
1266 commencement of its activities.

1267 **SECTION 21.** If any provision of this act is held by a court  
1268 to be invalid, such invalidity shall not affect the remaining  
1269 provisions of this act, and to this end the provisions of this act  
1270 are declared severable.

1271 **SECTION 22.** This act shall take effect and be in force from  
1272 and after July 1, 2004, and Sections 1 through 7 of this act shall  
1273 apply to all causes of action filed on or after that date.