

Senate Amendments to House Bill No. 13

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

40 11-11-3. (1) (a) (i) Civil actions of which the circuit
41 court has original jurisdiction shall be commenced in the county
42 where the defendant resides, or, if a corporation, in the county
43 of its principal place of business, or in the county where a
44 substantial alleged act or omission occurred or where a
45 substantial event that caused the injury occurred. * * *

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

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

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

58 (3) Notwithstanding subsection (1) of this section, any
59 action against a licensed physician, osteopath, dentist, nurse,
60 nurse-practitioner, physician assistant, psychologist, pharmacist,
61 podiatrist, optometrist, chiropractor, institution for the aged or
62 infirm, hospital or licensed pharmacy, including any legal entity
63 which may be liable for their acts or omissions, for malpractice,

64 negligence, error, omission, mistake, breach of standard of care
65 or the unauthorized rendering of professional services shall be
66 brought only in the county in which the alleged act or omission
67 occurred.

68 (4) (a) If a court of this state, on written motion of a
69 party, finds that in the interest of justice and for the
70 convenience of the parties and witnesses a claim or action would
71 be more properly heard in a forum outside this state or in a
72 different county of proper venue within this state, the court
73 shall decline to adjudicate the matter under the doctrine of forum
74 non conveniens. As to a claim or action that would be more
75 properly heard in a forum outside this state, the court shall
76 dismiss the claim or action. As to a claim or action that would
77 be more properly heard in a different county of proper venue
78 within this state, the venue shall be transferred to the
79 appropriate county. In determining whether to grant a motion to
80 dismiss an action or to transfer venue under the doctrine of forum
81 non conveniens, the court shall give consideration to the
82 following factors:

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

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

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

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

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

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

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

97 (b) A court may not dismiss a claim under this
98 subsection until the defendant files with the court or with the

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

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

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

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

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

131 * * *

132 (2) (a) In any cause of action filed on or after September
133 1, 2004, for injury based on malpractice or breach of standard of

134 care against a provider of health care, including institutions for
135 the aged or infirm, in the event the trier of fact finds the
136 defendant liable, they shall not award the plaintiff more than
137 Five Hundred Thousand Dollars (\$500,000.00) for noneconomic
138 damages.

139 * * *

140 (b) In any civil action filed on or after September 1,
141 2004, other than those actions described in paragraph (a) of this
142 subsection, in the event the trier of fact finds the defendant
143 liable, they shall not award the plaintiff more than One Million
144 Dollars (\$1,000,000.00) for noneconomic damages.

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

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

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

155 * * *

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

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

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

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

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

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

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

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

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

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

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

199 (ii) An adequate product warning or instruction is
200 one that a reasonably prudent person in the same or similar
201 circumstances would have provided with respect to the danger and
202 that communicates sufficient information on the dangers and safe
203 use of the product, taking into account the characteristics of,

204 and the ordinary knowledge common to an ordinary consumer who
205 purchases the product; or in the case of a prescription drug,
206 medical device or other product that is intended to be used only
207 under the supervision of a physician or other licensed
208 professional person, taking into account the characteristics of,
209 and the ordinary knowledge common to, a physician or other
210 licensed professional who prescribes the drug, device or other
211 product.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

338 (2) The seller of a product other than the manufacturer
339 shall not be liable for punitive damages unless the seller
340 exercised substantial control over that aspect of the design,
341 testing, manufacture, packaging or labeling of the product that
342 caused the harm for which recovery of damages is sought; the

343 seller altered or modified the product, and the alteration or
344 modification was a substantial factor in causing the harm for
345 which recovery of damages is sought; the seller had actual
346 knowledge of the defective condition of the product at the time he
347 supplied same * * *.

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

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

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

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

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

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

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

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

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

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

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

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

391 * * *

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

398 * * *

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

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

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

408 85-5-7. (1) As used in this section, "fault" means an act
409 or omission of a person which is a proximate cause of injury or
410 death to another person or persons, damages to property, tangible
411 or intangible, or economic injury, including, but not limited to,

412 negligence, malpractice, strict liability, absolute liability or
413 failure to warn. "Fault" shall not include any tort which results
414 from an act or omission committed with a specific wrongful intent.

415 * * *

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

427 * * *

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

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

437 (5) In actions involving joint tort-feasors, the trier of
438 fact shall determine the percentage of fault for each party
439 alleged to be at fault without regard to whether the joint
440 tort-feasor is immune from damages. Fault allocated under this
441 subsection to an immune tort-feasor or a tort-feasor whose
442 liability is limited by law shall not be reallocated to any other
443 tort-feasor.

444 * * *

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

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

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

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

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

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

462 * * *

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

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

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

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

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

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

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

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

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

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

511 (5) * * * A tales juror * * * shall not be compelled to
512 serve two (2) days successively unless the case in which the juror

513 is impaneled continues longer than one (1) day. Grand jurors
514 shall serve until discharged by the court.

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

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

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

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

533 13-5-28. If a grand, petit or other jury is ordered to be
534 drawn, the clerk thereafter shall cause each person drawn for jury
535 service to be served with a summons, either personally or by mail,
536 addressed to him at his usual residence, business or post office
537 address, requiring him to report for jury service at a specified
538 time and place. The summons shall include instructions to the
539 potential jurors that explain, in layman's terms, the provisions
540 of Section 13-5-23.

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

543 13-5-34. (1) A person summoned for jury service who fails
544 to appear or to complete jury service as directed, and who has
545 failed to obtain a postponement in compliance with the provisions
546 for requesting a postponement, or who fails to appear on the date
547 set pursuant to Section 14 of House Bill No. 13, 2004 First

548 Extraordinary Session, shall be ordered by the court to appear
549 forthwith and show cause for his failure to comply with the
550 summons. If he fails to show good cause for noncompliance with
551 the summons he is in civil contempt of court and * * * may be
552 fined not more than Five Hundred Dollars (\$500.00) or imprisoned
553 not more than three (3) days, or both. The prospective juror may
554 be excused from paying sanctions for good cause shown or in the
555 interest of justice.

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

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

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

565 (a) Grand jurors and petit jurors in the chancery,
566 county, circuit and special eminent domain courts shall be paid an
567 amount to be set by the board of supervisors, not to be less than
568 Twenty-five Dollars (\$25.00) per day and not to be greater than
569 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
570 25-3-41. In the trial of all cases where jurors are in charge of
571 bailiffs and are not permitted to separate, the sheriff with the
572 approval of the trial judge may pay for room and board of jurors
573 on panel for actual time of trial.

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

580 (b) Jurors making inquisitions of idiocy, lunacy or of
581 unsound mind and jurors on coroner's inquest shall be paid Five
582 Dollars (\$5.00) per day plus mileage authorized in Section 25-3-41

583 by the county treasurer on order of the board of supervisors on
584 certificate of the clerk of the chancery court in which such
585 inquisition is held.

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

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

599 (a) The local public library;

600 (b) Local law enforcement;

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

603 (d) Any other governmental agency.

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

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

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

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

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

616 (iv) A report by the Administrative Office of
617 Courts on the administration of the Lengthy Trial Fund in its

618 annual report on the judicial branch, setting forth the money
619 collected for and disbursed from the fund.

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

625 (c) To the extent funds are available in the Lengthy
626 Trial Fund, and in accordance with any rules or regulations
627 promulgated by the Administrative Office of Courts, the court may
628 pay replacement or supplemental wages out of the Lengthy Trial
629 Fund not to exceed Three Hundred Dollars (\$300.00) per day per
630 juror beginning on the eleventh day of jury service. In addition,
631 for any jurors who qualify for payment by virtue of having served
632 on a jury for more than ten (10) days, the court, upon finding
633 that such service posed a significant financial hardship to a
634 juror, even in light of payments made with respect to jury service
635 after the tenth day, may award replacement or supplemental wages
636 out of the Lengthy Trial Fund not to exceed One Hundred Dollars
637 (\$100.00) per day from the fourth to the tenth day of jury
638 service.

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

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

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

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

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

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

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

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

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

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

683 (c) Prior to the grant of a postponement with the
684 concurrence of the clerk of the court, the prospective juror fixes
685 a date certain to appear for jury service that is not more than
686 six (6) months or two (2) terms of court after the date on which

687 the prospective juror originally was called to serve and on which
688 date the court will be in session, whichever is the longer period.

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

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

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

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

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

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

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

730 73-25-27. The Mississippi State Board of Medical Licensure
731 after notice and opportunity for a hearing to the licentiate, is
732 authorized to suspend or revoke for any cause named herein any
733 license it has issued, or the renewal thereof, that authorizes any
734 person to practice medicine, osteopathy, or any other method of
735 preventing, diagnosing, relieving, caring for, or treating, or
736 curing disease, injury or other bodily condition. The procedure
737 for suspension of a license for being out of compliance with an
738 order for support, and the procedure for the reissuance or
739 reinstatement of a license suspended for that purpose, and the
740 payment of any fees for the reissuance or reinstatement of a
741 license suspended for that purpose, shall be governed by Section
742 93-11-157 or 93-11-163, as the case may be. If there is any
743 conflict between any provision of Section 93-11-157 or 93-11-163
744 and any provision of this chapter, the provisions of Section
745 93-11-157 or 93-11-163, as the case may be, shall control.

746 Such notice shall be effected by registered mail or personal
747 service setting forth the particular reasons for the proposed
748 action and fixing a date not less than thirty (30) days or more
749 than sixty (60) days from the date of such mailing or such
750 service, at which time the licentiate shall be given an
751 opportunity for a prompt and fair hearing. For the purpose of
752 such hearing the board, acting by and through its executive
753 office, may subpoena persons and papers on its own behalf and on
754 behalf of licentiate, including records obtained pursuant to
755 Section 73-25-28, may administer oaths and such testimony when

756 properly transcribed, together with such papers and exhibits,
757 shall be admissible in evidence for or against the licentiate. At
758 such hearing licentiate may appear by counsel and personally in
759 his own behalf. Any person sworn and examined as a witness in
760 such hearing shall not be held to answer criminally, nor shall any
761 papers or documents produced by such witness be competent evidence
762 in any criminal proceedings against such witness other than for
763 perjury in delivering his evidence. Any patient or the
764 representative of the patient who has both filed a complaint with
765 the Board of Medical Licensure against a licentiate and suffered
766 harm to his person that is alleged in the complaint shall have the
767 right, subject to reasonable restrictions imposed by the Board of
768 Medical Licensure, to attend any proceedings that determine
769 substantive rights of a licentiate conducted by the Board of
770 Medical Licensure for disciplinary purposes regarding the
771 licentiate as to that patient's treatment. Notice shall be
772 provided to the patient or his representative at the same time and
773 in the same manner as the notice is made to the licentiate.
774 Whether a patient has suffered harm shall be decided by the Board
775 of Medical Licensure. On the basis of any such hearing, or upon
776 default of the licentiate, the Board of Medical Licensure shall
777 make a determination specifying its findings of fact and
778 conclusions of law.

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

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

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

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

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

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

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE VENUE IN GENERAL CIVIL ACTIONS; TO AMEND SECTION
3 11-1-60, MISSISSIPPI CODE OF 1972, TO REVISE THE LIMITATION ON
4 NONECONOMIC DAMAGES IN MALPRACTICE ACTIONS AND TO PROVIDE
5 LIMITATIONS ON NONECONOMIC DAMAGES IN ALL OTHER CIVIL ACTIONS; TO
6 AMEND SECTION 11-1-63, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A
7 PRODUCT SELLER OTHER THAN A MANUFACTURER SHALL NOT BE LIABLE FOR A
8 LATENT DEFECT IF THE SELLER IS A MERE CONDUIT WHO PURCHASED THE
9 PRODUCT FROM A REPUTABLE MANUFACTURER; TO AMEND SECTION 11-1-65,
10 MISSISSIPPI CODE OF 1972, TO REVISE PUNITIVE DAMAGES; TO AMEND
11 SECTION 11-1-66, MISSISSIPPI CODE OF 1972, TO REVISE PREMISES
12 LIABILITY; TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO
13 REVISE THE LIMITATION OF JOINT AND SEVERAL LIABILITY FOR DAMAGES
14 CAUSED BY TWO OR MORE PERSONS; TO REPEAL SECTION 11-1-64,
15 MISSISSIPPI CODE OF 1972, WHICH PROVIDES THE PROCEDURE FOR
16 DISMISSING A DEFENDANT WHOSE LIABILITY IS BASED SOLELY ON HIS
17 STATUS AS A SELLER IN THE STREAM OF COMMERCE; TO AMEND SECTION
18 13-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURORS CAN ONLY
19 BE EXCUSED FROM SERVICE FOR ILLNESS OR UNDUE HARDSHIP; TO AMEND
20 SECTION 13-5-25, MISSISSIPPI CODE OF 1972, TO LIMIT THE FREQUENCY
21 OF JURY SERVICE; TO AMEND SECTION 13-5-28, MISSISSIPPI CODE OF
22 1972, TO REQUIRE NOTICE OF JURY SERVICE EXEMPTION ENTITLEMENT TO
23 BE INCLUDED IN JUROR SUMMONSES; TO AMEND SECTION 13-5-34,
24 MISSISSIPPI CODE OF 1972, TO REVISE THE PUNISHMENT FOR FAILURE TO
25 APPEAR FOR JURY SERVICE; TO AMEND SECTION 25-7-61, MISSISSIPPI
26 CODE OF 1972, TO CREATE A LENGTHY TRIAL FUND AND TO MAKE CLEAR
27 THAT NO COUNTY FUNDS WILL BE USED TO PAY SUPPLEMENTAL OR
28 REPLACEMENT WAGES TO JURORS UNDER THE ACT; TO AMEND SECTION

29 33-1-5, MISSISSIPPI CODE OF 1972, TO ELIMINATE CERTAIN JUROR
30 EXEMPTIONS; TO PROVIDE THAT JURORS CAN POSTPONE JURY SERVICE ONE
31 TIME ONLY; TO PROVIDE EMPLOYMENT PROTECTIONS FOR JURORS; TO AMEND
32 SECTION 73-25-27, MISSISSIPPI CODE OF 1972, TO PROVIDE THE RIGHT
33 FOR HARMED PATIENTS TO ATTEND DISCIPLINARY PROCEEDINGS INVOLVING
34 THE PHYSICIAN RESPONSIBLE FOR THE HARM; TO PROVIDE FOR A WAIVER OF
35 THE MEDICAL PRIVILEGE IN CERTAIN CASES; TO ALLOW BENCH TRIALS IN
36 CERTAIN CASES IF THE PARTIES AGREE; AND FOR RELATED PURPOSES.

SS26\HB13A.J

John O. Gilbert
Secretary of the Senate