

AMENDMENT PROPOSED TO

Am #5

HOUSE BILL NO. 13

BY: Representative Gunn

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

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

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

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

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

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



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

80 (4) (a) If a court of this state, on written motion of a
81 party, finds that in the interest of justice and for the
82 convenience of the parties and witnesses a claim or action would
83 be more properly heard in a forum outside this state or in a
84 different county of proper venue within this state, the court
85 shall decline to adjudicate the matter under the doctrine of forum
86 non conveniens. As to a claim or action that would be more
87 properly heard in a forum outside this state, the court shall
88 dismiss the claim or action. As to a claim or action that would
89 be more properly heard in a different county of proper venue
90 within this state, the venue shall be transferred to the
91 appropriate county. In determining whether to grant a motion to
92 dismiss an action or to transfer venue under the doctrine of forum
93 non conveniens, the court shall give consideration to the
94 following factors:

95 (i) Relative ease of access to sources of proof;
96 (ii) Availability and cost of compulsory process
97 for attendance of unwilling witnesses;

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



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

103 (v) Administrative difficulties for the forum
104 courts;

105 (vi) Existence of local interests in deciding the
106 case at home; and

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

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

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

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

125 (a) "Noneconomic damages" means subjective,
126 nonpecuniary damages arising from death, pain, suffering,
127 inconvenience, mental anguish, worry, emotional distress, loss of
128 society and companionship, loss of consortium, bystander injury,
129 physical impairment, disfigurement, injury to reputation,
130 humiliation, embarrassment, * * * other nonpecuniary damages, and
131 any other theory of damages such as fear of loss, illness or



injury. The term "noneconomic damages" shall not include * * * punitive or exemplary damages.

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

* * *

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

(3) (a) Regardless of the number of parties against whom an action is brought or the number of separate claims or actions brought with respect to the same injury, for causes of action filed on or after July 1, 2004, the aggregate amount recoverable for noneconomic damages by a plaintiff in any claim for injury based on malpractice or breach of standard of care against a provider of health care, including institutions for the aged or infirm, shall not exceed Five Hundred Thousand Dollars (\$500,000.00).

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

(4) (a) Regardless of the number of parties against whom an action is brought or the number of separate claims or actions brought with respect to the same injury, for causes of action filed on or after July 1, 2004, other than the actions described



164 in subsection (3), the aggregate amount recoverable for
165 noneconomic damages by a plaintiff in any claim for injury shall
166 not exceed ~~five (5) times the amount of reasonable and necessary~~
167 ~~medical expenses proven, or Five Hundred Thousand Dollars~~
168 ~~(\$500,000.00), whichever is greater; however, in no event shall~~
169 ~~the amount recoverable for noneconomic damages exceed One Million~~
170 ~~Dollars (\$1,000,000.00).~~

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

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

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

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

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

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

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

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

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



195 which the claimant justifiably relied in electing to use the
196 product; and

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

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

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

209 (c) (i) In any action alleging that a product is
210 defective because it failed to contain adequate warnings or
211 instructions pursuant to paragraph (a)(i)2 of this section, the
212 manufacturer or seller shall not be liable if the claimant does
213 not prove by the preponderance of the evidence that at the time
214 the product left the control of the manufacturer or seller, the
215 manufacturer or seller knew or in light of reasonably available
216 knowledge should have known about the danger that caused the
217 damage for which recovery is sought and that the ordinary user or
218 consumer would not realize its dangerous condition.

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



227 under the supervision of a physician or other licensed
228 professional person, taking into account the characteristics of,
229 and the ordinary knowledge common to, a physician or other
230 licensed professional who prescribes the drug, device or other
231 product.

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

240 (e) In any action alleging that a product is defective
241 pursuant to paragraph (a)(i)2 of this section, the manufacturer or
242 seller shall not be liable if the danger posed by the product is
243 known or is open and obvious to the user or consumer of the
244 product, or should have been known or open and obvious to the user
245 or consumer of the product, taking into account the
246 characteristics of, and the ordinary knowledge common to, the
247 persons who ordinarily use or consume the product.

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

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



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

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

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

284 (h) In any action alleging that a product is defective
285 pursuant to paragraph (a) of this section, the seller of a product
286 other than the manufacturer shall not be liable unless the seller
287 exercised substantial control over that aspect of the design,
288 testing, manufacture, packaging or labeling of the product that
289 caused the harm for which recovery of damages is sought; or the



290 seller altered or modified the product, and the alteration or
291 modification was a substantial factor in causing the harm for
292 which recovery of damages is sought; or the seller had actual
293 knowledge of the defective condition of the product at the time he
294 supplied the product. It is the intent of this section to
295 insulate innocent sellers who are not actively negligent, but
296 instead are mere conduits of a product.

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

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

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

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

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

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

319 (c) In any action pursuant to Section 11-1-63, punitive
320 damages shall not be awarded against any defendant who was in
321 compliance with specifically applicable regulations of a state or



322 federal governmental entity, provided that the applicable
323 regulations were promulgated for the purpose of protecting the
324 public against the harm or danger that is the subject of the
325 complaint.

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

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

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

338 (g) In all cases involving an award of punitive
339 damages, the fact finder, in determining the amount of punitive
340 damages, shall consider, to the extent relevant, the
341 following: * * * the nature and reprehensibility of the
342 defendant's wrongdoing, for example, the impact of the defendant's
343 conduct on the plaintiff, or the relationship of the defendant to
344 the plaintiff; the defendant's awareness of the amount of harm
345 being caused and the defendant's motivation in causing such harm;
346 the duration of the defendant's misconduct and whether the
347 defendant attempted to conceal such misconduct; and any other
348 circumstances shown by the evidence that bear on determining a
349 proper amount of punitive damages. The trier of fact shall be
350 instructed that the primary purpose of punitive damages is to
351 punish the wrongdoer and deter similar misconduct in the future by
352 the defendant and others while the purpose of compensatory damages
353 is to make the plaintiff whole. The trier of fact shall also be



354 instructed that any award of punitive damages must be awarded by a
355 ratio relative to the amount of compensatory damages not to exceed
356 nine (9) times compensatory and units set forth herein.

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

362 (ii) In determining whether the award is
363 excessive, the court shall take into consideration the following
364 factors:

365 1. Whether there is a reasonable relationship
366 between the punitive damage award and the harm likely to result
367 from the defendant's conduct as well as the harm that actually
368 occurred;

369 2. The degree of reprehensibility of the
370 defendant's conduct, the duration of that conduct, the defendant's
371 awareness, any concealment, and the existence and frequency of
372 similar past conduct;

373 3. In mitigation, the financial condition and
374 net worth of the defendant; and

375 4. In mitigation, the imposition of criminal
376 sanctions on the defendant for its conduct and the existence of
377 other civil awards against the defendant for the same conduct.

378 (3) The seller of a product other than the manufacturer
379 shall not be liable for punitive damages unless the seller
380 exercised substantial control over that aspect of the design,
381 testing, manufacture, packaging or labeling of the product that
382 caused the harm for which recovery of damages is sought; the
383 seller altered or modified the product, and the alteration or
384 modification was a substantial factor in causing the harm for
385 which recovery of damages is sought; the seller had actual



386 knowledge of the defective condition of the product at the time he
387 supplied same * * *.

388 (4) (a) In any civil action where an entitlement to
389 punitive damages shall have been established under applicable
390 laws, no award of punitive damages shall exceed the following:

391 (i) Ten Million Dollars (\$10,000,000.00) for a
392 defendant with a net worth of more than One Billion Dollars
393 (\$1,000,000,000.00);

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

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

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

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

410 (vi) Two percent (2%) of the defendant's net worth
411 for a defendant with a net worth of Fifty Million Dollars
412 (\$50,000,000.00) or less.

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



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

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

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

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

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

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

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

442 * * *

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

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



449 intentionally wrongful, illegal or criminal act unless the owner,
450 occupant, lessee or managing agent of the property knew or
451 reasonably should have known of the person's presence on the
452 property and knew or reasonably should have known of the risk of
453 such conduct by that person, and the failure to exercise
454 reasonable care to deter such conduct was a proximate cause of the
455 resulting damages or injury.

456 (2) No owner, occupant, lessee or managing agent of property
457 shall be liable for the death or injury of an independent
458 contractor or the independent contractor's employees resulting
459 from dangers of which the contractor knew or reasonably should
460 have known.

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

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

470 * * *

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



480 by the wrongful or negligent act or omission of the employee or
481 agent.

482 * * *

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

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

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

499 * * *

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

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

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

509 13-5-23. (1) All qualified persons shall be liable to serve
510 as jurors, unless excused by the court for one (1) of the
511 following causes:



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

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

517 * * *

518 (2) An excuse of illness under subsection (1)(a) of this
519 section may be made to the clerk of court outside of open court by
520 providing the clerk with * * * a certificate of a licensed
521 physician * * *, stating that the juror is ill and is unfit for
522 jury service, in which case the clerk may excuse the juror. If
523 the excuse of illness is not supported by a physician's
524 certificate, a judge of the court for which the individual was
525 called to jury service shall decide whether to excuse an
526 individual under subsection (1)(a) of this section.

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

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

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

538 (iii) Suffer physical hardship that would result
539 in illness or disease.

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



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

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

552 (e) A person asking a judge to grant an excuse under
553 subsection (1)(b) of this section shall be required to provide the
554 judge with documentation such as, but not limited to, federal and
555 state income tax returns, medical statements from licensed
556 physicians, proof of dependency or guardianship and similar
557 documents, which the judge finds to clearly support the request to
558 be excused. Failure to provide satisfactory documentation shall
559 result in a denial of the request to be excused.

560 (4) After two (2) years, a person excused from jury service
561 shall become eligible once again for qualification as a juror
562 unless the person was excused from service permanently. A person
563 is excused from jury service permanently only when the deciding
564 judge determines that the underlying grounds for being excused are
565 of a permanent nature.

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

570 **SECTION 9.** The following provision shall be codified as
571 Section 13-5-24, Mississippi Code of 1972:

572 13-5-24. (1) Notwithstanding any other provisions of this
573 chapter, individuals scheduled to appear for jury service have the
574 right to postpone the date of their initial appearance for jury



575 service one (1) time only. Postponements shall be granted upon
576 request, provided that:

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

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

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

588 (2) A subsequent request to postpone jury service may be
589 approved by a judicial officer only in the event of an extreme
590 emergency, such as a death in the family, sudden illness, or a
591 natural disaster or a national emergency in which the prospective
592 juror is personally involved, that could not have been anticipated
593 at the time the initial postponement was granted. Prior to the
594 grant of a second postponement, the prospective juror must fix a
595 date certain on which the individual will appear for jury service
596 within six (6) months of the postponement on a date when the court
597 will be in session.

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

600 **SECTION 10.** Section 13-5-25, Mississippi Code of 1972, is
601 amended as follows:

602 13-5-25. Every citizen over sixty-five (65) years of age,
603 and everyone who has served on the regular panel as a juror in the
604 actual trial of one or more litigated cases within two (2) years,
605 shall be exempt from service if he claims the privilege * * *. No
606 qualified juror shall be excluded because of any such reasons, but



607 the same shall be a personal privilege to be claimed by any person
608 selected for jury duty. Any citizen over sixty-five (65) years of
609 age may claim this personal privilege outside of open court by
610 providing the clerk of court with information that allows the
611 clerk to determine the validity of the claim.

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

616 **SECTION 11.** Section 13-5-28, Mississippi Code of 1972, is
617 amended as follows:

618 13-5-28. If a grand, petit or other jury is ordered to be
619 drawn, the clerk thereafter shall cause each person drawn for jury
620 service to be served with a summons, either personally or by mail,
621 addressed to him at his usual residence, business or post office
622 address, requiring him to report for jury service at a specified
623 time and place. The summons shall include instructions to the
624 potential jurors that explain, in layman's terms, the provisions
625 of Section 13-5-23.

626 **SECTION 12.** Section 13-5-34, Mississippi Code of 1972, is
627 amended as follows:

628 13-5-34. (1) A person summoned for jury service who fails
629 to appear or to complete jury service as directed, and who has
630 failed to obtain a postponement in compliance with the provisions
631 for requesting a postponement, or who fails to appear on the date
632 set pursuant to Section 13-5-24 shall be ordered by the court to
633 appear forthwith and show cause for his failure to comply with the
634 summons. If he fails to show good cause for noncompliance with
635 the summons he is in civil contempt of court and * * * may be
636 fined not more than Five Hundred Dollars (\$500.00) or imprisoned
637 not more than three (3) days, or both. The prospective juror may



638 be excused from paying sanctions for good cause shown or in the
639 interest of justice.

640 (2) In addition to, or in lieu of, the fine or imprisonment
641 provided in subsection (1) of this section, the court may order
642 that the prospective juror complete a period of community service
643 for a period no less than if the prospective juror would have
644 completed jury service, and provide proof of completion of this
645 community service to the court.

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

648 13-5-99. (1) It shall be unlawful for any employer or any
649 other person to persuade or attempt to persuade any juror to avoid
650 jury service; to intimidate or to threaten any juror in that
651 respect; or to remove or otherwise subject an employee to adverse
652 employment action as a result of jury service if the employee
653 notifies his or her employer that he or she has been summoned to
654 serve as a juror within a reasonable period of time after receipt
655 of a summons.

656 (2) It shall be unlawful for an employer to require or
657 request an employee to use annual, vacation or sick leave for time
658 spent responding to a summons for jury duty, time spent
659 participating in the jury selection process, or time spent
660 actually serving on a jury. Nothing in this provision shall be
661 construed to require an employer to provide annual, vacation or
662 sick leave to employees under the provisions of this statute who
663 otherwise are not entitled to such benefits under company
664 policies.

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

668 (4) A court shall automatically postpone and reschedule the
669 service of a summoned juror employed by an employer with five (5)



670 or fewer full-time employees, or their equivalent, if another
671 employee of that employer has previously been summoned to appear
672 during the same period. Such postponement will not constitute the
673 excused individual's right to one (1) automatic postponement under
674 Section 13-5-24.

675 **SECTION 14.** Section 25-7-61, Mississippi Code of 1972, is
676 amended as follows:

677 25-7-61. (1) Fees of jurors shall be payable as follows:

678 (a) Grand jurors and petit jurors in the chancery,
679 county, circuit and special eminent domain courts shall be paid an
680 amount to be set by the board of supervisors, not to be less than
681 Twenty-five Dollars (\$25.00) per day and not to be greater than
682 Forty Dollars (\$40.00) per day, plus mileage authorized in Section
683 25-3-41. In the trial of all cases where jurors are in charge of
684 bailiffs and are not permitted to separate, the sheriff with the
685 approval of the trial judge may pay for room and board of jurors
686 on panel for actual time of trial.

687 No grand juror shall receive any compensation except mileage
688 unless he shall have been sworn as provided by Section 13-5-45;
689 and no petit juror except those jurors called on special venires
690 shall receive any compensation authorized under this subsection
691 except mileage unless he shall have been sworn as provided by
692 Section 13-5-71.

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

699 (c) Jurors in the justice courts shall be paid an
700 amount of not less than Ten Dollars (\$10.00) per day and not more
701 than Fifteen Dollars (\$15.00) per day, to be established by the



board of supervisors. In all criminal cases in the justice court wherein the prosecution fails, the fees of jurors shall be paid by the county treasurer on order of the board of supervisors on certificate of the county attorney in all counties that have county attorneys, otherwise by the justice court judge.

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

- (a) The local public library;
- (b) Local law enforcement;
- (c) The Mississippi Fire Fighters Memorial Burn Center Fund created in Section 7-9-70, Mississippi Code of 1972; or
- (d) Any other governmental agency.

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

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

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

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

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

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



733 **(b) The administrator shall use any monies deposited in**
734 **the Lengthy Trial Fund to pay full or partial wage replacement or**
735 **supplementation to jurors whose employers pay less than full**
736 **regular wages when the period of jury service lasts more than ten**
737 **(10) days.**

738 **(c) To the extent funds are available in the Lengthy**
739 **Trial Fund, and in accordance with any rules or regulations**
740 **promulgated by the Administrative Office of Courts, the court may**
741 **pay replacement or supplemental wages out of the Lengthy Trial**
742 **Fund not to exceed Three Hundred Dollars (\$300.00) per day per**
743 **juror beginning on the eleventh day of jury service. In addition,**
744 **for any jurors who qualify for payment by virtue of having served**
745 **on a jury for more than ten (10) days, the court, upon finding**
746 **that such service posed a significant financial hardship to a**
747 **juror, even in light of payments made with respect to jury service**
748 **after the tenth day, may award replacement or supplemental wages**
749 **out of the Lengthy Trial Fund not to exceed One Hundred Dollars**
750 **(\$100.00) per day from the fourth to the tenth day of jury**
751 **service.**

752 **(d) Any juror who is serving or has served on a jury**
753 **that qualifies for payment from the Lengthy Trial Fund, provided**
754 **the service commenced on or after the effective date of House Bill**
755 **No. 13, 2004 First Extraordinary Session, may submit a request for**
756 **payment from the Lengthy Trial Fund on a form that the**
757 **administrator provides. Payment shall be limited to the**
758 **difference between the jury fee specified in subsection (1) of**
759 **this section and the actual amount of wages a juror earns, up to**
760 **the maximum level payable, minus any amount the juror actually**
761 **receives from the employer during the same time period.**

762 **(i) The form shall disclose the juror's regular**
763 **wages, the amount the employer will pay during the term of jury**
764 **service starting on the eleventh day and thereafter, the amount of**



765 replacement or supplemental wages requested, and any other
766 information the administrator deems necessary for proper payment.

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

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

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

781 **SECTION 15.** Section 33-1-5, Mississippi Code of 1972, is
782 amended as follows:

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

787 **SECTION 16.** Section 41-17-7, Mississippi Code of 1972, which
788 provides for the exemption from jury service of state insane
789 hospital personnel, is repealed.

790 **SECTION 17.** Section 47-5-55, Mississippi Code of 1972, which
791 provides for the exemption from jury service of state correctional
792 system employees and officers, is repealed.

793 **SECTION 18. Medical review panel.**

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

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



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

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

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



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

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

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

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

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

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

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

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



860 Mississippi law, whether a procedural, statute of limitations or
861 other exception or defense, at any time without need for
862 completion of the review process by the medical review panel.

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

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

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

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



891 If either the plaintiff or defendant fails to strike, the board
892 shall strike for that party within five (5) additional days.

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

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

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

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

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

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



923 physician. The two (2) physicians so chosen shall jointly select
924 the third physician.

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

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

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

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

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

941 (4) **Evidence.**

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

945 (b) The evidence may consist of:

946 (i) Medical records;

947 (ii) Sworn statements;

948 (iii) Expert reports signed by experts;

949 (iv) Deposition transcripts; (v)

950 Any other evidence allowed by the medical review panel or
951 submitted by the parties.

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



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

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

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

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

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

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

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

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



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

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

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

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

998 (7) **Form of decision.** The decision reached by the medical
999 review panel shall be in writing, shall state the facts upon which
1000 it is based, shall be of public record, and shall be admissible as
1001 evidence in the civil case filed.

1002 (8) **Panelist immunity.** A panelist shall have absolute
1003 immunity from civil liability for all communications, findings,
1004 opinions and conclusions made in the course and scope of duties
1005 prescribed by this section.

1006 (9) **Panelist compensation.**

1007 (a) (i) Each physician member of the medical review
1008 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for
1009 all work performed as a member of the panel, and in addition
1010 thereto, per diem as provided in Section 25-3-69, Mississippi Code
1011 of 1972, and travel expenses as would be calculated for a state
1012 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1013 (ii) The attorney chairman of the medical review
1014 panel shall be paid at the rate of One Hundred Fifty Dollars
1015 (\$150.00) per hour, not to exceed a total of Three Thousand
1016 Dollars (\$3,000.00), for all work performed as a member of the
1017 panel, and in addition thereto, per diem as provided in Section



1018 25-3-69, Mississippi Code of 1972, and travel expenses as would be
1019 calculated for a state employee pursuant to Section 25-3-41,
1020 Mississippi Code of 1972.

1021 (b) The costs of the medical review panel shall be
1022 split between the parties. The panel members shall by affidavit
1023 request the payment due under this subsection (9) from the board,
1024 which in turn shall bill the parties for the proportionate share
1025 of each party.

1026 (10) **Delivery and effect of decision.** The chairman shall
1027 submit a copy of the panel's report to the board and all parties
1028 and attorneys by registered or certified mail within five (5) days
1029 after the panel renders its opinion. The panel's report shall be
1030 of public record.

1031 (11) **Allocation of attorney fees and expenses.**

1032 (a) If the decision of the panel finds for the
1033 defendant and the defendant prevails in court, the plaintiff shall
1034 pay reasonable attorney fees and expenses of the defendant to be
1035 determined by the court.

1036 (b) If the decision of the panel finds for the
1037 plaintiff:

1038 (i) The plaintiff may submit a written settlement
1039 offer for a sum certain to the defendant. If the defendant
1040 rejects the settlement offer, the plaintiff prevails in court, and
1041 the judgment is equal to or greater than the settlement offer, the
1042 defendant shall pay reasonable attorney fees and expenses of the
1043 plaintiff to be determined by the court.

1044 (ii) The defendant also may submit a written
1045 settlement offer for a sum certain to the plaintiff. If the
1046 plaintiff rejects the settlement offer and the defendant prevails
1047 in the subsequent court action, or the plaintiff prevails but the
1048 judgment is less than the defendant's settlement offer, the



1049 plaintiff shall pay reasonable attorney fees and expenses of the
1050 defendant to be determined by the court.

1051 **SECTION 19.** Section 11-46-19, Mississippi Code of 1972, is
1052 amended as follows:

1053 **[Until July 1, 2005, this section shall read as follows:]**

1054 11-46-19. (1) The board shall have the following powers:

1055 (a) To provide oversight over the Tort Claims Fund;

1056 (b) To approve any award made from the Tort Claims
1057 Fund;

1058 (c) To pay all necessary expenses attributable to the
1059 operation of the Tort Claims Fund from such fund;

1060 (d) To assign litigated claims against governmental
1061 entities other than political subdivisions to competent attorneys
1062 unless such governmental entity has a staff attorney who is
1063 competent to represent the governmental entity and is approved by
1064 the board; the board shall give primary consideration to attorneys
1065 practicing in the jurisdiction where the claim arose in assigning
1066 cases; attorneys hired to represent a governmental entity other
1067 than a political subdivision shall be paid according to the
1068 department fee schedule;

1069 (e) To approve all claimants' attorney fees in claims
1070 against the state;

1071 (f) To employ on a full-time basis a staff attorney who
1072 shall possess the minimum qualifications required to be a member
1073 of The Mississippi Bar, and such other staff as it may deem
1074 necessary to carry out the purposes of this chapter; the employees
1075 in the positions approved by the board shall be hired by the
1076 director, shall be employees of the department, and shall be
1077 compensated from the Tort Claims Fund;

1078 (g) To contract with one or more reputable insurance
1079 consulting firms as may be necessary;



1080 (h) To purchase any policies of liability insurance and
1081 to administer any plan of self-insurance or policies of liability
1082 insurance required for the protection of the state against claims
1083 and suits brought under this chapter;

1084 (i) To expend money from the Tort Claims Fund for the
1085 purchase of any policies of liability insurance and the payment of
1086 any award or settlement of a claim against the state under the
1087 provisions of this chapter or of a claim against any school
1088 district, junior college or community college district, or state
1089 agency, arising from the operation of school buses or other
1090 vehicles, under the provisions of Section 37-41-42;

1091 (j) To cancel, modify or replace any policy or policies
1092 of liability insurance procured by the board;

1093 (k) To issue certificates of coverage to governmental
1094 entities, including any political subdivision participating in any
1095 plan of liability protection approved by the board;

1096 (l) To review and approve or reject any plan of
1097 liability insurance or self-insurance reserves proposed or
1098 provided by political subdivisions if such plan is intended to
1099 serve as security for risks of claims and suits against them for
1100 which immunity has been waived under this chapter;

1101 (m) To administer disposition of claims against the
1102 Tort Claims Fund;

1103 (n) To withhold issuance of any warrants payable from
1104 funds of a participating state entity should such entity fail to
1105 make required contributions to the Tort Claims Fund in the time
1106 and manner prescribed by the board;

1107 (o) To develop a comprehensive statewide list of
1108 attorneys who are qualified to represent the state and any
1109 employee thereof named as a defendant in a claim brought under
1110 this chapter against the state or such employee;



1111 (p) To develop a schedule of fees for paying attorneys
1112 defending claims against the state or an employee thereof;

1113 (q) To adopt and promulgate such reasonable rules and
1114 regulations and to do and perform all such acts as are necessary
1115 to carry out its powers and duties under this chapter;

1116 (r) To establish and assess premiums to be paid by
1117 governmental entities required to participate in the Tort Claims
1118 Fund;

1119 (s) To contract with a third-party administrator to
1120 process claims against the state under this chapter;

1121 (t) To annually submit its budget request to the
1122 Legislature as a state agency;

1123 (u) To dispose of salvage obtained in settlement or
1124 payment of any claim at fair market value by such means and upon
1125 such terms as the board may think best; * * *

1126 (v) To administer the Medical Malpractice Insurance
1127 Availability Plan under Section 83-48-5; and

1128 (w) To act as the board as required under House Bill
1129 No. 13, 2004 First Extraordinary Session, dealing with medical
1130 malpractice claims as follows:

1131 (i) To accept filings under the act;

1132 (ii) To coordinate the selection of panels;

1133 (iii) To maintain lists of attorneys eligible for
1134 appointment as attorney chairmen;

1135 (iv) To promulgate rules in reference to the
1136 qualifications of attorneys serving as panel members;

1137 (v) To promulgate rules and regulations necessary
1138 to implement the provisions of Section 18 of House Bill No. 13,
1139 2004 First Extraordinary Session; and

1140 (vi) To provide general administrative support.

1141 (2) Policies of liability insurance purchased for the
1142 protection of governmental entities against claims and suits



1143 brought under this chapter shall be purchased pursuant to the
1144 competitive bidding procedures set forth in Section 31-7-13.

1145 (3) The department shall have the following powers and
1146 duties:

1147 (a) To annually report to the Legislature concerning
1148 each comprehensive plan of liability protection established
1149 pursuant to Section 11-46-17(2). Such report shall include a
1150 comprehensive analysis of the cost of the plan, a breakdown of the
1151 cost to participating state entities, and such other information
1152 as the department may deem necessary.

1153 (b) To provide the board with any staff and meeting
1154 facilities as may be necessary to carry out the duties of the
1155 board as provided in this chapter.

1156 (c) To submit the board's budget request for the
1157 initial year of operation of the board in order to authorize
1158 expenditures for the 1993-1994 fiscal year and for the
1159 appropriation of such general funds as shall be required for the
1160 commencement of its activities.

1161 [From and after July 1, 2005, this section shall read as
1162 follows:]

1163 11-46-19. (1) The board shall have the following powers:

1164 (a) To provide oversight over the Tort Claims Fund;

1165 (b) To approve any award made from the Tort Claims
1166 Fund;

1167 (c) To pay all necessary expenses attributable to the
1168 operation of the Tort Claims Fund from such fund;

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



1175 cases; attorneys hired to represent a governmental entity other
1176 than a political subdivision shall be paid according to the
1177 department fee schedule;

1178 (e) To approve all claimants' attorney fees in claims
1179 against the state;

1180 (f) To employ on a full-time basis a staff attorney who
1181 shall possess the minimum qualifications required to be a member
1182 of The Mississippi Bar, and such other staff as it may deem
1183 necessary to carry out the purposes of this chapter; the employees
1184 in the positions approved by the board shall be hired by the
1185 director, shall be employees of the department, and shall be
1186 compensated from the Tort Claims Fund;

1187 (g) To contract with one or more reputable insurance
1188 consulting firms as may be necessary;

1189 (h) To purchase any policies of liability insurance and
1190 to administer any plan of self-insurance or policies of liability
1191 insurance required for the protection of the state against claims
1192 and suits brought under this chapter;

1193 (i) To expend money from the Tort Claims Fund for the
1194 purchase of any policies of liability insurance and the payment of
1195 any award or settlement of a claim against the state under the
1196 provisions of this chapter or of a claim against any school
1197 district, junior college or community college district, or state
1198 agency, arising from the operation of school buses or other
1199 vehicles, under the provisions of Section 37-41-42;

1200 (j) To cancel, modify or replace any policy or policies
1201 of liability insurance procured by the board;

1202 (k) To issue certificates of coverage to governmental
1203 entities, including any political subdivision participating in any
1204 plan of liability protection approved by the board;

1205 (l) To review and approve or reject any plan of
1206 liability insurance or self-insurance reserves proposed or



1207 provided by political subdivisions if such plan is intended to
1208 serve as security for risks of claims and suits against them for
1209 which immunity has been waived under this chapter;

1210 (m) To administer disposition of claims against the
1211 Tort Claims Fund;

1212 (n) To withhold issuance of any warrants payable from
1213 funds of a participating state entity should such entity fail to
1214 make required contributions to the Tort Claims Fund in the time
1215 and manner prescribed by the board;

1216 (o) To develop a comprehensive statewide list of
1217 attorneys who are qualified to represent the state and any
1218 employee thereof named as a defendant in a claim brought under
1219 this chapter against the state or such employee;

1220 (p) To develop a schedule of fees for paying attorneys
1221 defending claims against the state or an employee thereof;

1222 (q) To adopt and promulgate such reasonable rules and
1223 regulations and to do and perform all such acts as are necessary
1224 to carry out its powers and duties under this chapter;

1225 (r) To establish and assess premiums to be paid by
1226 governmental entities required to participate in the Tort Claims
1227 Fund;

1228 (s) To contract with a third-party administrator to
1229 process claims against the state under this chapter;

1230 (t) To annually submit its budget request to the
1231 Legislature as a state agency;

1232 (u) To dispose of salvage obtained in settlement or
1233 payment of any claim at fair market value by such means and upon
1234 such terms as the board may think best; and

1235 * * *

1236 (v) To act as the board as required under House Bill
1237 No. 13, 2004 First Extraordinary Session, dealing with medical
1238 malpractice claims as follows:



1239 (i) To accept filings under the act;
1240 (ii) To coordinate the selection of panels;
1241 (iii) To maintain lists of attorneys eligible for
1242 appointment as attorney chairmen;
1243 (iv) To promulgate rules in reference to the
1244 qualifications of attorneys serving as panel members;
1245 (v) To promulgate rules and regulations necessary
1246 to implement the provisions of Section 18 of House Bill No. 13,
1247 2004 First Extraordinary Session; and
1248 (vi) To provide general administrative support.

1249 (2) Policies of liability insurance purchased for the
1250 protection of governmental entities against claims and suits
1251 brought under this chapter shall be purchased pursuant to the
1252 competitive bidding procedures set forth in Section 31-7-13.

1253 (3) The department shall have the following powers and
1254 duties:

1255 (a) To annually report to the Legislature concerning
1256 each comprehensive plan of liability protection established
1257 pursuant to Section 11-46-17(2). Such report shall include a
1258 comprehensive analysis of the cost of the plan, a breakdown of the
1259 cost to participating state entities, and such other information
1260 as the department may deem necessary.

1261 (b) To provide the board with any staff and meeting
1262 facilities as may be necessary to carry out the duties of the
1263 board as provided in this chapter.

1264 (c) To submit the board's budget request for the
1265 initial year of operation of the board in order to authorize
1266 expenditures for the 1993-1994 fiscal year and for the
1267 appropriation of such general funds as shall be required for the
1268 commencement of its activities.

1269 **SECTION 20.** If any provision of this act is held by a court
1270 to be invalid, such invalidity shall not affect the remaining



1271 provisions of this act, and to this end the provisions of this act
1272 are declared severable.

1273 **SECTION 21.** Sections 8 through 17 of this act shall take
1274 effect and be in force from and after July 1, 2005; the remainder
1275 of this act shall take effect and be in force from and after July
1276 1, 2004, and Sections 1 through 7 and Section 18 of this act shall
1277 apply to all causes of action filed on or after July 1, 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 PROHIBIT PUNITIVE DAMAGES AGAINST A
11 DEFENDANT FOR ANY REGULATED ACTIVITY CONDUCTED OR PRODUCT IN
12 COMPLIANCE WITH FEDERAL AND STATE REGULATIONS, TO LIMIT LIABILITY
13 UNDER A THEORY OF VICARIOUS RESPONSIBILITY, AND TO PROVIDE A
14 PLAINTIFF REASONABLE ATTORNEY FEES IN CASES WHERE PUNITIVE DAMAGES
15 ARE AWARDED; TO AMEND SECTION 11-1-66, MISSISSIPPI CODE OF 1972,
16 TO REVISE THE IMMUNITY OF PREMISES OWNERS FROM CIVIL LIABILITY; TO
17 AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE THE
18 LIMITATION OF JOINT AND SEVERAL LIABILITY FOR DAMAGES CAUSED BY
19 TWO OR MORE PERSONS; TO REPEAL SECTION 11-1-64, MISSISSIPPI CODE
20 OF 1972, WHICH PROVIDES THE PROCEDURE FOR DISMISSING A DEFENDANT
21 WHOSE LIABILITY IS BASED SOLELY ON HIS STATUS AS A SELLER IN THE
22 STREAM OF COMMERCE; TO AMEND SECTION 13-5-23, MISSISSIPPI CODE OF
23 1972, TO PROVIDE THAT JURORS CAN ONLY BE EXCUSED FROM SERVICE FOR
24 ILLNESS OR UNDUE HARDSHIP; TO CODIFY SECTION 13-5-24, MISSISSIPPI
25 CODE OF 1972, TO PROVIDE THAT JURORS CAN POSTPONE JURY SERVICE ONE
26 TIME ONLY; TO AMEND SECTION 13-5-25, MISSISSIPPI CODE OF 1972, TO
27 LIMIT THE FREQUENCY OF JURY SERVICE; TO AMEND SECTION 13-5-28,
28 MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF JURY SERVICE
29 EXEMPTION ENTITLEMENT TO BE INCLUDED IN JUROR SUMMONSES; TO AMEND
30 SECTION 13-5-34, MISSISSIPPI CODE OF 1972, TO REVISE THE
31 PUNISHMENT FOR FAILURE TO APPEAR FOR JURY SERVICE; TO CODIFY
32 SECTION 13-5-99, MISSISSIPPI CODE OF 1972, TO PROVIDE EMPLOYMENT
33 PROTECTIONS FOR JURORS; TO AMEND SECTION 25-7-61, MISSISSIPPI CODE
34 OF 1972, TO CREATE A LENGTHY TRIAL FUND AND TO MAKE CLEAR THAT NO
35 COUNTY FUNDS WILL BE USED TO PAY SUPPLEMENTAL OR REPLACEMENT WAGES
36 TO JURORS UNDER THE ACT; TO AMEND SECTION 33-1-5, MISSISSIPPI CODE
37 OF 1972, TO ELIMINATE CERTAIN JUROR EXEMPTIONS; TO REPEAL SECTIONS
38 41-17-7 AND 47-5-55, MISSISSIPPI CODE OF 1972, WHICH PROVIDE
39 CERTAIN EXEMPTIONS FROM JURY SERVICE; TO PROVIDE THAT ALL
40 MALPRACTICE CLAIMS SHALL BE REVIEWED BY A MEDICAL REVIEW PANEL; TO
41 ALLOW PARTIES TO MUTUALLY AGREE TO OPT OUT OF THIS REQUIREMENT; TO
42 ESTABLISH THE MEMBERSHIP OF THE REVIEW PANEL; TO PROVIDE WHAT
43 EVIDENCE MAY BE CONSIDERED BY THE PANEL; TO PROVIDE THE FORM OF
44 THE DECISION; TO PROVIDE FOR PANELIST IMMUNITY AND COMPENSATION;
45 TO PROVIDE THAT THE LOSING PARTY SHALL PAY ATTORNEY FEES TO THE

46 PREVAILING PARTY UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION
47 11-46-19, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR
48 RELATED PURPOSES.

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