

**Adopted**  
**COMMITTEE AMENDMENT NO 1 PROPOSED TO**

**House Bill No. 4**

**BY: Committee**

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

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

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

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

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

65       (2) In any civil action where more than one (1) plaintiff is  
66 joined, each plaintiff shall independently establish proper venue;

67 it is not sufficient that venue is proper for any other plaintiff  
68 joined in the civil action.

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

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

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

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

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

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

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

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

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

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

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

124                    (a) "Noneconomic damages" means subjective,  
125 nonpecuniary damages arising from death, pain, suffering,  
126 inconvenience, mental anguish, worry, emotional distress, loss of  
127 society and companionship, loss of consortium, bystander injury,  
128 physical impairment, disfigurement, injury to reputation,  
129 humiliation, embarrassment, \* \* \* other nonpecuniary damages, and  
130 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, for injury based on malpractice or breach of standard of care against a provider of health care, including institutions for the aged or infirm, the aggregate amount recoverable for noneconomic damages by a plaintiff in any claim for injury 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

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

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

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

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

178 11-1-63. \* \* \* In any action for damages caused by a product  
179 except for commercial damage to the product itself:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

301       11-1-65. (1) For the purposes of this section,  
302 "compensatory" means the amount of money awarded to a party for  
303 the party's actual damages, whether economic or noneconomic.

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

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

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

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

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

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

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

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

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

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

358                   (ii) In determining whether the award is  
359 excessive, the court shall take into consideration the following  
360 factors:

361                           1. Whether there is a reasonable relationship  
362 between the punitive damage award and the harm likely to result  
363 from the defendant's conduct as well as the harm that actually  
364 occurred;

365                           2. The degree of reprehensibility of the  
366 defendant's conduct, the duration of that conduct, the defendant's  
367 awareness, any concealment, and the existence and frequency of  
368 similar past conduct;

369                           3. In mitigation, the financial condition and  
370 net worth of the defendant; and

371                           4. In mitigation, the imposition of criminal  
372 sanctions on the defendant for its conduct and the existence of  
373 other civil awards against the defendant for the same conduct.

374       (3) The seller of a product other than the manufacturer  
375 shall not be liable for punitive damages unless the seller  
376 exercised substantial control over that aspect of the design,  
377 testing, manufacture, packaging or labeling of the product that  
378 caused the harm for which recovery of damages is sought; the  
379 seller altered or modified the product, and the alteration or  
380 modification was a substantial factor in causing the harm for  
381 which recovery of damages is sought; the seller had actual  
382 knowledge of the defective condition of the product at the time he  
383 supplied same \* \* \*.

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

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

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

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

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

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

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

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

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

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

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

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

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

432 \* \* \*

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.

450 (2) No owner, occupant, lessee or managing agent of property  
451 shall be liable for the death or injury of an independent  
452 contractor or the independent contractor's employees resulting  
453 from dangers of which the contractor knew or reasonably should  
454 have known.

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

457 85-5-7. (1) As used in this section, "fault" means an act  
458 or omission of a person which is a proximate cause of injury or  
459 death to another person or persons, damages to property, tangible  
460 or intangible, or economic injury, including, but not limited to,  
461 negligence, malpractice, strict liability, absolute liability or  
462 failure to warn. "Fault" shall not include any tort which results  
463 from an act or omission committed with a specific wrongful intent.

464 \* \* \*

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

476 \* \* \*

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

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

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

493       \* \* \*

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

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

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

503       13-5-1. Every citizen not under the age of twenty-one (21)  
504 years, who is either a qualified elector, or a resident freeholder  
505 of the county for more than one (1) year, is able to read and  
506 write, and has not been convicted of a felony is a competent  
507 juror. \* \* \* The lack of any such qualifications on the part of  
508 one or more jurors shall not, however, vitiate an indictment or  
509 verdict. Moreover, \* \* \* no juror shall serve on any jury who has  
510 served as such for the last preceding two (2) years. No

511 juror \* \* \* who has a case of his own pending in that court \* \* \*  
512 shall serve in his own case.

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

517 "1. Your name \_\_\_\_\_ Last \_\_\_\_\_ First \_\_\_\_\_ Middle  
518 initial

519 2. Your home address \_\_\_\_\_

520 3. Your occupation \_\_\_\_\_

521 4. Your age \_\_\_\_\_

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

523 6. If you live outside the county seat, the number of miles  
524 you live from the courthouse \_\_\_\_\_ miles

525 \_\_\_\_\_

526 Sign your name"

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

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

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

536 13-5-23. (1) All qualified persons shall be liable to serve  
537 as jurors, unless excused by the court for one (1) of the  
538 following causes:

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



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

544 \* \* \*

545 (2) An excuse of illness under subsection (1)(a) of this  
546 section may be made to the clerk of court outside of open court by  
547 providing the clerk with \* \* \* a certificate of a licensed  
548 physician \* \* \*, stating that the juror is ill and is unfit for  
549 jury service, in which case the clerk may excuse the juror. If  
550 the excuse of illness is not supported by a physician's  
551 certificate, a judge of the court for which the individual was  
552 called to jury service shall decide whether to excuse an  
553 individual under subsection (1)(a) of this section.

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

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

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

565 (iii) Suffer physical hardship that would result  
566 in illness or disease.

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

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

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

579           (e) A person asking a judge to grant an excuse under  
580 subsection (1)(b) of this section shall be required to provide the  
581 judge with documentation such as, but not limited to, federal and  
582 state income tax returns, medical statements from licensed  
583 physicians, proof of dependency or guardianship and similar  
584 documents, which the judge finds to clearly support the request to  
585 be excused. Failure to provide satisfactory documentation shall  
586 result in a denial of the request to be excused.

587           (4) After two (2) years, a person excused from jury service  
588 shall become eligible once again for qualification as a juror  
589 unless the person was excused from service permanently. A person  
590 is excused from jury service permanently only when the deciding  
591 judge determines that the underlying grounds for being excused are  
592 of a permanent nature.

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

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

599           13-5-24. (1) Notwithstanding any other provisions of this  
600 chapter, individuals scheduled to appear for jury service have the  
601 right to postpone the date of their initial appearance for jury

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

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

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

609 (c) Prior to the grant of a postponement with the  
610 concurrence of the clerk of the court, the prospective juror fixes  
611 a date certain to appear for jury service that is not more than  
612 six (6) months after the date on which the prospective juror  
613 originally was called to serve and on which date the court will be  
614 in session.

615 (2) A subsequent request to postpone jury service may be  
616 approved by a judicial officer only in the event of an extreme  
617 emergency, such as a death in the family, sudden illness, or a  
618 natural disaster or a national emergency in which the prospective  
619 juror is personally involved, that could not have been anticipated  
620 at the time the initial postponement was granted. Prior to the  
621 grant of a second postponement, the prospective juror must fix a  
622 date certain on which the individual will appear for jury service  
623 within six (6) months of the postponement on a date when the court  
624 will be in session.

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

627 13-5-25. Every citizen over sixty-five (65) years of age,  
628 and everyone who has served on the regular panel as a juror in the  
629 actual trial of one or more litigated cases within two (2) years,  
630 shall be exempt from service if he claims the privilege \* \* \*. No  
631 qualified juror shall be excluded because of any such reasons, but  
632 the same shall be a personal privilege to be claimed by any person  
633 selected for jury duty. Any citizen over sixty-five (65) years of

634 age may claim this personal privilege outside of open court by  
635 providing the clerk of court with information that allows the  
636 clerk to determine the validity of the claim.

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

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

643         13-5-28. If a grand, petit or other jury is ordered to be  
644 drawn, the clerk thereafter shall cause each person drawn for jury  
645 service to be served with a summons, either personally or by mail,  
646 addressed to him at his usual residence, business or post office  
647 address, requiring him to report for jury service at a specified  
648 time and place. The summons shall include instructions to the  
649 potential jurors that explain, in layman's terms, the provisions  
650 of Section 13-5-23.

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

653         13-5-34. (1) A person summoned for jury service who fails  
654 to appear or to complete jury service as directed, and who has  
655 failed to obtain a postponement in compliance with the provisions  
656 for requesting a postponement, or who fails to appear on the date  
657 set pursuant to Section 13-5-24 shall be ordered by the court to  
658 appear forthwith and show cause for his failure to comply with the  
659 summons. If he fails to show good cause for noncompliance with  
660 the summons he is in civil contempt of court and \* \* \* may be  
661 fined not more than Five Hundred Dollars (\$500.00) or imprisoned  
662 not more than three (3) days, or both. The prospective juror may  
663 be excused from paying sanctions for good cause shown or in the  
664 interest of justice.

665       (2) In addition to, or in lieu of, the fine or imprisonment  
666 provided in subsection (1) of this section, the court may order  
667 that the prospective juror complete a period of community service  
668 for a period no less than if the prospective juror would have  
669 completed jury service, and provide proof of completion of this  
670 community service to the court.

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

673       13-5-99. (1) It shall be unlawful for any employer or any  
674 other person to persuade or attempt to persuade any juror to avoid  
675 jury service; to intimidate or to threaten any juror in that  
676 respect; or to remove or otherwise subject an employee to adverse  
677 employment action as a result of jury service if the employee  
678 notifies his or her employer that he or she has been summoned to  
679 serve as a juror within a reasonable period of time after receipt  
680 of a summons.

681       (2) It shall be unlawful for an employer to require or  
682 request an employee to use annual, vacation or sick leave for time  
683 spent responding to a summons for jury duty, time spent  
684 participating in the jury selection process, or time spent  
685 actually serving on a jury. Nothing in this provision shall be  
686 construed to require an employer to provide annual, vacation or  
687 sick leave to employees under the provisions of this statute who  
688 otherwise are not entitled to such benefits under company  
689 policies.

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

693       (4) A court shall automatically postpone and reschedule the  
694 service of a summoned juror employed by an employer with five (5)  
695 or fewer full-time employees, or their equivalent, if another  
696 employee of that employer has previously been summoned to appear

697 during the same period. Such postponement will not constitute the  
698 excused individual's right to one (1) automatic postponement under  
699 Section 13-5-24.

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

702 25-7-61. (1) Fees of jurors shall be payable as follows:

703 (a) Grand jurors and petit jurors in the chancery,  
704 county, circuit and special eminent domain courts shall be paid an  
705 amount to be set by the board of supervisors, not to be less than  
706 Twenty-five Dollars (\$25.00) per day and not to be greater than  
707 Forty Dollars (\$40.00) per day, plus mileage authorized in Section  
708 25-3-41. In the trial of all cases where jurors are in charge of  
709 bailiffs and are not permitted to separate, the sheriff with the  
710 approval of the trial judge may pay for room and board of jurors  
711 on panel for actual time of trial.

712 No grand juror shall receive any compensation except mileage  
713 unless he shall have been sworn as provided by Section 13-5-45;  
714 and no petit juror except those jurors called on special venires  
715 shall receive any compensation authorized under this subsection  
716 except mileage unless he shall have been sworn as provided by  
717 Section 13-5-71.

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

724 (c) Jurors in the justice courts shall be paid an  
725 amount of not less than Ten Dollars (\$10.00) per day and not more  
726 than Fifteen Dollars (\$15.00) per day, to be established by the  
727 board of supervisors. In all criminal cases in the justice court  
728 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.

(b) The administrator shall use any monies deposited in the Lengthy Trial Fund to pay full or partial wage replacement or supplementation to jurors whose employers pay less than full

regular wages when the period of jury service lasts more than ten (10) days.

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

(d) Any juror who is serving or has served on a jury that qualifies for payment from the Lengthy Trial Fund, provided the service commenced on or after the effective date of House Bill No. 4, 2004 First Extraordinary Session, may submit a request for payment from the Lengthy Trial Fund on a form that the administrator provides. Payment shall be limited to the difference between the state-paid jury fee and the actual amount of wages a juror earns, up to the maximum level payable, minus any amount the juror actually receives from the employer during the same time period.

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

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



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

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

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

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

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

**SECTION 19. Medical review panel.**

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

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

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

(ii) "Health care provider" means a person, partnership, limited liability partnership, limited liability company, corporation, facility, or institution licensed by this state to provide health care or professional services as a physician, hospital, institution for the aged or infirm, community blood center, tissue bank, dentist, registered or licensed practical nurse or certified nurse assistant, ambulance service, certified registered nurse anesthetist, nurse-midwife, licensed midwife, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, occupational therapist, psychologist, social

825 worker, licensed professional counselor, or any nonprofit facility  
826 considered tax-exempt under Section 501(c)(3), Internal Revenue  
827 Code, pursuant to 26 USC 501(c)(3), for the diagnosis and  
828 treatment of cancer or cancer-related diseases, whether or not  
829 such a facility is required to be licensed by this state, or any  
830 professional corporation a health care provider is authorized to  
831 form under the Mississippi Code of 1972, or any partnership,  
832 limited liability partnership, limited liability company, or  
833 corporation whose business is conducted principally by health care  
834 providers, or an officer, employee, partner, member, shareholder,  
835 or agent thereof acting in the course and scope of his employment.

836 (iii) "Malpractice" means any unintentional tort  
837 or any breach of contract based on health care or professional  
838 services rendered, or which should have been rendered, by a health  
839 care provider, to a patient, including failure to render services  
840 timely and the handling of a patient, including loading and  
841 unloading of a patient, and also includes all legal responsibility  
842 of a health care provider arising from acts or omissions in the  
843 training or supervision of health care providers, or from defects  
844 in blood, tissue, transplants, drugs and medicines, or from  
845 defects in or failures of prosthetic devices, implanted in or used  
846 on or in the person of a patient.

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

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

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

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

863                   (ii) Each defendant shall file a written answer  
864 within thirty (30) days of service of the request. If the  
865 defendant fails to file an answer as required, the board shall  
866 notify the defendant of the obligation to file and penalty for  
867 failure to file; notice shall be by certified or registered United  
868 States mail. If the defendant has not filed within thirty (30)  
869 days of the receipt of the notice specified in this subparagraph  
870 (ii), the request for review shall be dismissed; the panel, if  
871 formed, shall be dissolved, and the plaintiff shall be allowed to  
872 proceed in court upon the complaint filed.

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

874                   (a) During the pendency of proceedings under this  
875 section, a health care provider against whom a claim has been  
876 filed may raise any exception or defenses available pursuant to  
877 Mississippi law, whether a procedural, statute of limitations or  
878 other exception or defense, at any time without need for  
879 completion of the review process by the medical review panel.

880                   (b) If the court finds for the party raising the  
881 exception or defense, that party shall be dismissed. If there are  
882 no defendants remaining, the panel, if established, shall be  
883 dissolved.

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

885                   (a) The medical review panel shall consist of three (3)  
886 physicians who each hold an unlimited license to practice medicine  
887 in Mississippi and one (1) attorney who shall be the nonvoting  
888 chair of the panel. The parties may agree on the attorney member

889 of the medical review panel within thirty (30) days after the  
890 filing of the answer; if no agreement can be reached, then the  
891 attorney member of the medical review panel shall be selected as  
892 follows:

893                   (i) The board shall draw five (5) names at random  
894 from the list of attorneys maintained by the board who have  
895 medical malpractice experience. The names of judges, magistrates,  
896 district attorneys and assistant district attorneys shall be  
897 excluded if drawn and new names drawn in their place. After  
898 selection of the attorney names, the board shall notify the  
899 parties of the attorney names from which the parties, within five  
900 (5) days, may choose the attorney member of the panel. If no  
901 agreement can be reached within five (5) days, the parties shall  
902 immediately initiate a procedure of selecting the attorney by each  
903 striking two (2) names alternately, with the plaintiff striking  
904 first and so advising the defendant of the name of the attorney so  
905 stricken; thereafter, the defendant and the plaintiff shall  
906 alternately strike until both sides have stricken two (2) names  
907 and the remaining name shall be the attorney member of the panel.  
908 If either the plaintiff or defendant fails to strike, the board  
909 shall strike for that party within five (5) additional days.

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

913                   (b) The attorney shall act as chairman of the panel and  
914 shall have no vote. The chairman shall preside at panel meetings,  
915 advise the panel as to questions of law, and shall prepare the  
916 opinion of the panel as required in subsection (7) of this  
917 section. It is the duty of the chairman to expedite the selection  
918 of the other panel members, to convene the panel and expedite the  
919 panel's review of the proposed complaint. The attorney chairman  
920 shall establish, by order, a reasonable schedule for submission of

evidence to the medical review panel, but must allow sufficient time for the parties to make full and adequate presentation of related facts and authorities within one hundred twenty (120) days following selection of the panel.

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

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

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

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

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

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

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

(vii) The physician selection process shall be completed within thirty (30) days of the selection of the attorney

953 chairman.

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

958 (4) **Evidence.**

959 (a) The evidence to be considered by the medical review  
960 panel shall be promptly submitted by the respective parties in  
961 written form only.

962 (b) The evidence may consist of:

- 963 (i) Medical records;
- 964 (ii) Sworn statements;
- 965 (iii) Expert reports signed by experts;
- 966 (iv) Deposition transcripts;
- 967 (v) Any other evidence allowed by the medical  
968 review panel or submitted by the parties.

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

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

975 (e) The plaintiff must sign a valid authorization  
976 allowing defendants to obtain the plaintiff's medical records.  
977 The defendant shall treat all medical records in a confidential  
978 manner and shall not disclose the contents of the records to  
979 anyone other than the panel or other experts; all other experts  
980 must treat the plaintiff's records as confidential.

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

983 (5) **Hearings.** (a) After submission of all evidence and  
984 upon ten (10) days' notice to the other side, either party or the

985 panel shall have the right to convene the panel at a time and  
986 place agreeable to the members of the panel; each party is  
987 entitled to request only one (1) hearing. The panel may hold as  
988 many hearings as it chooses. The purpose of a hearing is to ask  
989 questions as to additional evidence needed and to afford an  
990 opportunity to make oral presentation of the facts. The chairman  
991 of the panel shall preside at all hearings, which shall be  
992 informal.

993 (b) The following are locations where hearings may be  
994 held:

995 (i) At a courthouse or other available public  
996 building in the county where the act or omission is alleged to  
997 have occurred.

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

1000 (iii) Private offices in the county where the act  
1001 or omission is alleged to have occurred may be used if there is no  
1002 cost or if the parties pay for the cost.

1003 (6) **Panel deliberations and decision.** After receiving all  
1004 evidence from the parties, the panel shall convene to discuss the  
1005 evidence presented not less than one (1) time, and, not later than  
1006 sixty (60) days after receiving all evidence from the parties,  
1007 shall render a written decision signed by the panelists, together  
1008 with written reasons for their conclusions, as follows:

1009 (a) There was a breach of the appropriate standard of  
1010 care;

1011 (b) There was not a breach of the appropriate standard  
1012 of care; or

1013 (c) Whether the defendant or defendants failed to  
1014 comply with the appropriate standard of care cannot be determined.

1015 (7) **Form of decision.** The decision reached by the medical  
1016 review panel shall be in writing, shall state the facts upon which

1017 it is based, shall be of public record, and shall be admissible as  
1018 evidence in the civil case filed.

1019 (8) **Panelist immunity.** A panelist shall have absolute  
1020 immunity from civil liability for all communications, findings,  
1021 opinions and conclusions made in the course and scope of duties  
1022 prescribed by this section.

1023 (9) **Panelist compensation.**

1024 (a) (i) Each physician member of the medical review  
1025 panel shall be paid a fee of Five Hundred Dollars (\$500.00) for  
1026 all work performed as a member of the panel, and in addition  
1027 thereto, per diem as provided in Section 25-3-69, Mississippi Code  
1028 of 1972, and travel expenses as would be calculated for a state  
1029 employee pursuant to Section 25-3-41, Mississippi Code of 1972.

1030 (ii) The attorney chairman of the medical review  
1031 panel shall be paid at the rate of One Hundred Fifty Dollars  
1032 (\$150.00) per hour, not to exceed a total of Three Thousand  
1033 Dollars (\$3,000.00), for all work performed as a member of the  
1034 panel, and in addition thereto, per diem as provided in Section  
1035 25-3-69, Mississippi Code of 1972, and travel expenses as would be  
1036 calculated for a state employee pursuant to Section 25-3-41,  
1037 Mississippi Code of 1972.

1038 (b) The costs of the medical review panel shall be  
1039 split between the parties. The panel members shall by affidavit  
1040 request the payment due under this subsection (9) from the board,  
1041 which in turn shall bill the parties for the proportionate share  
1042 of each party.

1043 (10) **Delivery and effect of decision.** The chairman shall  
1044 submit a copy of the panel's report to the board and all parties  
1045 and attorneys by registered or certified mail within five (5) days  
1046 after the panel renders its opinion. The panel's report shall be  
1047 of public record.

1048 (11) **Allocation of attorney fees and expenses.**



1049           (a) If the decision of the panel finds for the  
1050 defendant and the defendant prevails in court, the plaintiff shall  
1051 pay reasonable attorney fees and expenses of the defendant to be  
1052 determined by the court.

1053           (b) If the decision of the panel finds for the  
1054 plaintiff:

1055                 (i) The plaintiff may submit a written settlement  
1056 offer for a sum certain to the defendant. If the defendant  
1057 rejects the settlement offer, the plaintiff prevails in court, and  
1058 the judgment is equal to or greater than the settlement offer, the  
1059 defendant shall pay reasonable attorney fees and expenses of the  
1060 plaintiff to be determined by the court.

1061                 (ii) The defendant also may submit a written  
1062 settlement offer for a sum certain to the plaintiff. If the  
1063 plaintiff rejects the settlement offer and the defendant prevails  
1064 in the subsequent court action, or the plaintiff prevails but the  
1065 judgment is less than the defendant's settlement offer, the  
1066 plaintiff shall pay reasonable attorney fees and expenses of the  
1067 defendant to be determined by the court.

1068           **SECTION 20.** Section 11-46-19, Mississippi Code of 1972, is  
1069 amended as follows:

1070           **[Until July 1, 2005, this section shall read as follows:]**

1071           11-46-19. (1) The board shall have the following powers:

1072                 (a) To provide oversight over the Tort Claims Fund;

1073                 (b) To approve any award made from the Tort Claims  
1074 Fund;

1075                 (c) To pay all necessary expenses attributable to the  
1076 operation of the Tort Claims Fund from such fund;

1077                 (d) To assign litigated claims against governmental  
1078 entities other than political subdivisions to competent attorneys  
1079 unless such governmental entity has a staff attorney who is  
1080 competent to represent the governmental entity and is approved by

1081 the board; the board shall give primary consideration to attorneys  
1082 practicing in the jurisdiction where the claim arose in assigning  
1083 cases; attorneys hired to represent a governmental entity other  
1084 than a political subdivision shall be paid according to the  
1085 department fee schedule;

1086 (e) To approve all claimants' attorney fees in claims  
1087 against the state;

1088 (f) To employ on a full-time basis a staff attorney who  
1089 shall possess the minimum qualifications required to be a member  
1090 of The Mississippi Bar, and such other staff as it may deem  
1091 necessary to carry out the purposes of this chapter; the employees  
1092 in the positions approved by the board shall be hired by the  
1093 director, shall be employees of the department, and shall be  
1094 compensated from the Tort Claims Fund;

1095 (g) To contract with one or more reputable insurance  
1096 consulting firms as may be necessary;

1097 (h) To purchase any policies of liability insurance and  
1098 to administer any plan of self-insurance or policies of liability  
1099 insurance required for the protection of the state against claims  
1100 and suits brought under this chapter;

1101 (i) To expend money from the Tort Claims Fund for the  
1102 purchase of any policies of liability insurance and the payment of  
1103 any award or settlement of a claim against the state under the  
1104 provisions of this chapter or of a claim against any school  
1105 district, junior college or community college district, or state  
1106 agency, arising from the operation of school buses or other  
1107 vehicles, under the provisions of Section 37-41-42;

1108 (j) To cancel, modify or replace any policy or policies  
1109 of liability insurance procured by the board;

1110 (k) To issue certificates of coverage to governmental  
1111 entities, including any political subdivision participating in any  
1112 plan of liability protection approved by the board;

1113           (1) To review and approve or reject any plan of  
1114 liability insurance or self-insurance reserves proposed or  
1115 provided by political subdivisions if such plan is intended to  
1116 serve as security for risks of claims and suits against them for  
1117 which immunity has been waived under this chapter;  
1118           (m) To administer disposition of claims against the  
1119 Tort Claims Fund;  
1120           (n) To withhold issuance of any warrants payable from  
1121 funds of a participating state entity should such entity fail to  
1122 make required contributions to the Tort Claims Fund in the time  
1123 and manner prescribed by the board;  
1124           (o) To develop a comprehensive statewide list of  
1125 attorneys who are qualified to represent the state and any  
1126 employee thereof named as a defendant in a claim brought under  
1127 this chapter against the state or such employee;  
1128           (p) To develop a schedule of fees for paying attorneys  
1129 defending claims against the state or an employee thereof;  
1130           (q) To adopt and promulgate such reasonable rules and  
1131 regulations and to do and perform all such acts as are necessary  
1132 to carry out its powers and duties under this chapter;  
1133           (r) To establish and assess premiums to be paid by  
1134 governmental entities required to participate in the Tort Claims  
1135 Fund;  
1136           (s) To contract with a third-party administrator to  
1137 process claims against the state under this chapter;  
1138           (t) To annually submit its budget request to the  
1139 Legislature as a state agency;  
1140           (u) To dispose of salvage obtained in settlement or  
1141 payment of any claim at fair market value by such means and upon  
1142 such terms as the board may think best; \* \* \*  
1143           (v) To administer the Medical Malpractice Insurance  
1144 Availability Plan under Section 83-48-5; and

1145                   (w) To act as the board as required under House Bill  
1146 No. 4, 2004 First Extraordinary Session, dealing with medical  
1147 malpractice claims as follows:  
1148                   (i) To accept filings under the act;  
1149                   (ii) To coordinate the selection of panels;  
1150                   (iii) To maintain lists of attorneys eligible for  
1151 appointment as attorney chairmen;  
1152                   (iv) To promulgate rules in reference to the  
1153 qualifications of attorneys serving as panel members;  
1154                   (v) To promulgate rules and regulations necessary  
1155 to implement the provisions of Section 19 of House Bill No. 4,  
1156 2004 First Extraordinary Session; and  
1157                   (vi) To provide general administrative support.

1158           (2) Policies of liability insurance purchased for the  
1159 protection of governmental entities against claims and suits  
1160 brought under this chapter shall be purchased pursuant to the  
1161 competitive bidding procedures set forth in Section 31-7-13.

1162           (3) The department shall have the following powers and  
1163 duties:

1164                   (a) To annually report to the Legislature concerning  
1165 each comprehensive plan of liability protection established  
1166 pursuant to Section 11-46-17(2). Such report shall include a  
1167 comprehensive analysis of the cost of the plan, a breakdown of the  
1168 cost to participating state entities, and such other information  
1169 as the department may deem necessary.

1170                   (b) To provide the board with any staff and meeting  
1171 facilities as may be necessary to carry out the duties of the  
1172 board as provided in this chapter.

1173                   (c) To submit the board's budget request for the  
1174 initial year of operation of the board in order to authorize  
1175 expenditures for the 1993-1994 fiscal year and for the

1176 appropriation of such general funds as shall be required for the  
1177 commencement of its activities.

1178 **[From and after July 1, 2005, this section shall read as**  
1179 **follows:]**

1180 11-46-19. (1) The board shall have the following powers:

1181 (a) To provide oversight over the Tort Claims Fund;

1182 (b) To approve any award made from the Tort Claims  
1183 Fund;

1184 (c) To pay all necessary expenses attributable to the  
1185 operation of the Tort Claims Fund from such fund;

1186 (d) To assign litigated claims against governmental  
1187 entities other than political subdivisions to competent attorneys  
1188 unless such governmental entity has a staff attorney who is  
1189 competent to represent the governmental entity and is approved by  
1190 the board; the board shall give primary consideration to attorneys  
1191 practicing in the jurisdiction where the claim arose in assigning  
1192 cases; attorneys hired to represent a governmental entity other  
1193 than a political subdivision shall be paid according to the  
1194 department fee schedule;

1195 (e) To approve all claimants' attorney fees in claims  
1196 against the state;

1197 (f) To employ on a full-time basis a staff attorney who  
1198 shall possess the minimum qualifications required to be a member  
1199 of The Mississippi Bar, and such other staff as it may deem  
1200 necessary to carry out the purposes of this chapter; the employees  
1201 in the positions approved by the board shall be hired by the  
1202 director, shall be employees of the department, and shall be  
1203 compensated from the Tort Claims Fund;

1204 (g) To contract with one or more reputable insurance  
1205 consulting firms as may be necessary;

1206 (h) To purchase any policies of liability insurance and  
1207 to administer any plan of self-insurance or policies of liability

1208 insurance required for the protection of the state against claims  
1209 and suits brought under this chapter;

1210 (i) To expend money from the Tort Claims Fund for the  
1211 purchase of any policies of liability insurance and the payment of  
1212 any award or settlement of a claim against the state under the  
1213 provisions of this chapter or of a claim against any school  
1214 district, junior college or community college district, or state  
1215 agency, arising from the operation of school buses or other  
1216 vehicles, under the provisions of Section 37-41-42;

1217 (j) To cancel, modify or replace any policy or policies  
1218 of liability insurance procured by the board;

1219 (k) To issue certificates of coverage to governmental  
1220 entities, including any political subdivision participating in any  
1221 plan of liability protection approved by the board;

1222 (l) To review and approve or reject any plan of  
1223 liability insurance or self-insurance reserves proposed or  
1224 provided by political subdivisions if such plan is intended to  
1225 serve as security for risks of claims and suits against them for  
1226 which immunity has been waived under this chapter;

1227 (m) To administer disposition of claims against the  
1228 Tort Claims Fund;

1229 (n) To withhold issuance of any warrants payable from  
1230 funds of a participating state entity should such entity fail to  
1231 make required contributions to the Tort Claims Fund in the time  
1232 and manner prescribed by the board;

1233 (o) To develop a comprehensive statewide list of  
1234 attorneys who are qualified to represent the state and any  
1235 employee thereof named as a defendant in a claim brought under  
1236 this chapter against the state or such employee;

1237 (p) To develop a schedule of fees for paying attorneys  
1238 defending claims against the state or an employee thereof;

1239           (q) To adopt and promulgate such reasonable rules and  
1240 regulations and to do and perform all such acts as are necessary  
1241 to carry out its powers and duties under this chapter;

1242           (r) To establish and assess premiums to be paid by  
1243 governmental entities required to participate in the Tort Claims  
1244 Fund;

1245           (s) To contract with a third-party administrator to  
1246 process claims against the state under this chapter;

1247           (t) To annually submit its budget request to the  
1248 Legislature as a state agency;

1249           (u) To dispose of salvage obtained in settlement or  
1250 payment of any claim at fair market value by such means and upon  
1251 such terms as the board may think best; and

1252       \* \* \*

1253           (v) To act as the board as required under House Bill  
1254 No. 4, 2004 First Extraordinary Session, dealing with medical  
1255 malpractice claims as follows:

1256                   (i) To accept filings under the act;

1257                   (ii) To coordinate the selection of panels;

1258                   (iii) To maintain lists of attorneys eligible for  
1259 appointment as attorney chairmen;

1260                   (iv) To promulgate rules in reference to the  
1261 qualifications of attorneys serving as panel members;

1262                   (v) To promulgate rules and regulations necessary  
1263 to implement the provisions of Section 19 of House Bill No. 4,  
1264 2004 First Extraordinary Session; and

1265                   (vi) To provide general administrative support.

1266       (2) Policies of liability insurance purchased for the  
1267 protection of governmental entities against claims and suits  
1268 brought under this chapter shall be purchased pursuant to the  
1269 competitive bidding procedures set forth in Section 31-7-13.

1270           (3) The department shall have the following powers and  
1271 duties:

1272           (a) To annually report to the Legislature concerning  
1273 each comprehensive plan of liability protection established  
1274 pursuant to Section 11-46-17(2). Such report shall include a  
1275 comprehensive analysis of the cost of the plan, a breakdown of the  
1276 cost to participating state entities, and such other information  
1277 as the department may deem necessary.

1278           (b) To provide the board with any staff and meeting  
1279 facilities as may be necessary to carry out the duties of the  
1280 board as provided in this chapter.

1281           (c) To submit the board's budget request for the  
1282 initial year of operation of the board in order to authorize  
1283 expenditures for the 1993-1994 fiscal year and for the  
1284 appropriation of such general funds as shall be required for the  
1285 commencement of its activities.

1286           **SECTION 21.** If any provision of this act is held by a court  
1287 to be invalid, such invalidity shall not affect the remaining  
1288 provisions of this act, and to this end the provisions of this act  
1289 are declared severable.

1290           **SECTION 22.** This act shall take effect and be in force from  
1291 and after July 1, 2004, and Sections 1 through 7 of this act shall  
1292 apply to all causes of action filed on or after that date.

**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 MULTIPLE PUNITIVE DAMAGE  
11 AWARDS FOR THE SAME CONDUCT OF A DEFENDANT EXCEPT IN CERTAIN  
12 CASES, TO PROHIBIT PUNITIVE DAMAGES AGAINST A DEFENDANT FOR ANY  
13 REGULATED ACTIVITY CONDUCTED IN COMPLIANCE WITH FEDERAL AND STATE



14 REGULATIONS, AND TO REVISE THE MAXIMUM AMOUNT OF PUNITIVE DAMAGE  
15 AWARDS; TO AMEND SECTION 11-1-66, MISSISSIPPI CODE OF 1972, TO  
16 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 13-5-1, MISSISSIPPI CODE OF  
23 1972, TO ELIMINATE CERTAIN JUROR DISQUALIFICATIONS; TO AMEND  
24 SECTION 13-5-23, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURORS  
25 CAN ONLY BE EXCUSED FROM SERVICE FOR ILLNESS OR UNDUE HARDSHIP; TO  
26 CODIFY SECTION 13-5-24, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
27 JURORS CAN POSTPONE JURY SERVICE ONE TIME ONLY; TO AMEND SECTION  
28 13-5-25, MISSISSIPPI CODE OF 1972, TO LIMIT THE FREQUENCY OF JURY  
29 SERVICE; TO AMEND SECTION 13-5-28, MISSISSIPPI CODE OF 1972, TO  
30 REQUIRE NOTICE OF JURY SERVICE EXEMPTION ENTITLEMENT TO BE  
31 INCLUDED IN JUROR SUMMONSES; TO AMEND SECTION 13-5-34, MISSISSIPPI  
32 CODE OF 1972, TO REVISE THE PUNISHMENT FOR FAILURE TO APPEAR FOR  
33 JURY SERVICE; TO CODIFY SECTION 13-5-99, MISSISSIPPI CODE OF 1972,  
34 TO PROVIDE EMPLOYMENT PROTECTIONS FOR JURORS; TO AMEND SECTION  
35 25-7-61, MISSISSIPPI CODE OF 1972, TO CREATE A LENGTHY TRIAL FUND;  
36 TO AMEND SECTION 33-1-5, MISSISSIPPI CODE OF 1972, TO ELIMINATE  
37 CERTAIN JUROR EXEMPTIONS; TO REPEAL SECTIONS 41-17-7 AND 47-5-55,  
38 MISSISSIPPI CODE OF 1972, WHICH PROVIDE CERTAIN EXEMPTIONS FROM  
39 JURY SERVICE; TO PROVIDE THAT ALL MALPRACTICE CLAIMS SHALL BE  
40 REVIEWED BY A MEDICAL REVIEW PANEL; TO ALLOW PARTIES TO MUTUALLY  
41 AGREE TO OPT OUT OF THIS REQUIREMENT; TO ESTABLISH THE MEMBERSHIP  
42 REVIEW PANEL; TO PROVIDE WHAT EVIDENCE MAY BE CONSIDERED BY THE  
43 PANEL; TO PROVIDE THE FORM OF THE DECISION; TO PROVIDE FOR  
44 PANELIST IMMUNITY AND COMPENSATION; TO PROVIDE THAT THE LOSING  
45 PARTY SHALL PAY ATTORNEY FEES TO THE PREVAILING PARTY UNDER  
46 CERTAIN CIRCUMSTANCES; TO AMEND SECTION 11-46-19, MISSISSIPPI CODE  
47 OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.