

By: Representative Chaney

To: Judiciary A

## HOUSE BILL NO. 637

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO  
2 LIMIT PUNITIVE DAMAGES AWARDS AND TO CREATE EXCEPTIONS TO THOSE  
3 LIMITATIONS; TO LIMIT RECOVERY OF NONECONOMIC DAMAGES; TO DEFINE  
4 "ECONOMIC" AND "NONECONOMIC" DAMAGES; TO AMEND SECTION 11-7-13,  
5 MISSISSIPPI CODE OF 1972, TO LIMIT RECOVERY OF NONECONOMIC AND  
6 PUNITIVE DAMAGES IN A WRONGFUL DEATH ACTION; TO AMEND SECTION  
7 11-7-15, MISSISSIPPI CODE OF 1972, TO PROHIBIT CERTAIN NEGLIGENT  
8 PLAINTIFFS FROM RECOVERY; TO AMEND SECTION 11-11-3, MISSISSIPPI  
9 CODE OF 1972, TO CLARIFY VENUE OF ACTIONS AGAINST RESIDENTS OF  
10 MISSISSIPPI; TO AMEND SECTION 11-11-11, MISSISSIPPI CODE OF 1972,  
11 TO CLARIFY VENUE OF ACTIONS AGAINST NONRESIDENTS; TO AMEND SECTION  
12 11-11-57, MISSISSIPPI CODE OF 1972, TO PROVIDE WHEN VENUE MAY BE  
13 CHANGED; TO AMEND SECTIONS 15-1-36 AND 15-1-49, MISSISSIPPI CODE  
14 OF 1972, TO INCORPORATE A STATUTE OF REPOSE IN THE STATUTES OF  
15 LIMITATIONS CONTAINED THEREIN; TO AMEND SECTION 15-1-59,  
16 MISSISSIPPI CODE OF 1972, TO LIMIT THE SAVING IN FAVOR OF PERSONS  
17 UNDER DISABILITIES; TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF  
18 1972, TO RESTRICT JOINT AND SEVERAL LIABILITY; TO CODIFY SECTION  
19 11-11-21, MISSISSIPPI CODE OF 1972, TO PROVIDE WHERE A CAUSE OF  
20 ACTION ACCRUES IN THE STATE; TO CODIFY SECTION 11-11-23,  
21 MISSISSIPPI CODE OF 1972, TO PROVIDE WHEN A CAUSE OF ACTION  
22 ACCRUES OUTSIDE THE STATE; TO REPEAL SECTIONS 11-3-23 AND 11-3-25,  
23 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE ASSESSMENT OF A  
24 PENALTY ON CERTAIN JUDGMENTS APPEALED TO THE SUPREME COURT; TO  
25 REPEAL SECTIONS 11-11-5 AND 11-11-7, MISSISSIPPI CODE OF 1972,  
26 WHICH PROVIDE FOR PROPER VENUE AGAINST RAILROADS AND CERTAIN OTHER  
27 COMPANIES AND AGAINST INSURANCE COMPANIES; TO REPEAL SECTION  
28 11-11-13, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR PROPER  
29 VENUE IN ACTIONS AGAINST NONRESIDENT MOTORISTS; AND FOR RELATED  
30 PURPOSES.

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

32 SECTION 1. Section 11-1-65, Mississippi Code of 1972, is  
33 amended as follows:

34 11-1-65. (1) In any action in which punitive damages are  
35 sought:

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

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

45           (c) If, but only if, an award of compensatory damages  
46 has been made against a party, the court shall promptly commence  
47 an evidentiary hearing before the same trier of fact to determine  
48 whether punitive damages may be considered.

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

53           (e) In all cases involving an award of punitive  
54 damages, the fact finder, in determining the amount of punitive  
55 damages, shall consider, to the extent relevant, the following:  
56 the defendant's financial condition and net worth; the nature and  
57 reprehensibility of the defendant's wrongdoing, at the time and  
58 under the circumstances when it was committed, for example, the  
59 impact of the defendant's conduct on the plaintiff, or the  
60 relationship of the defendant to the plaintiff; the defendant's  
61 awareness of the amount of harm being caused and the defendant's  
62 motivation in causing such harm; the duration of the defendant's  
63 misconduct and whether the defendant attempted to conceal such  
64 misconduct; whether the defendant's conduct found to have caused  
65 harm to the plaintiff is at present continuing with respect to the  
66 plaintiff or other individuals; and any other circumstances shown  
67 by the evidence that bear on determining a proper amount of  
68 punitive damages. The trier of fact shall be instructed that the  
69 primary purpose of punitive damages is to punish the wrongdoer and  
70 deter similar misconduct in the future by the defendant and others  
71 while the purpose of compensatory damages is to make the plaintiff  
72 whole.

73           (f) (i) Before entering judgment for an award of

74 punitive damages the trial court shall ascertain that the award is  
75 reasonable in its amount and rationally related to the purpose to  
76 punish what occurred giving rise to the award and to deter its  
77 repetition by the defendant and others.

78 (ii) In determining whether the award is  
79 excessive, the court shall take into consideration the following  
80 factors:

81 1. Whether there is a reasonable relationship  
82 between the punitive damage award and the harm likely to result  
83 from the defendant's conduct as well as the harm that actually  
84 occurred;

85 2. The degree of reprehensibility of the  
86 defendant's conduct, the duration of that conduct, the defendant's  
87 awareness, any concealment, and the existence and frequency of  
88 similar past conduct;

89 3. The financial condition and net worth of  
90 the defendant; and

91 4. In mitigation, the imposition of criminal  
92 sanctions on the defendant for its conduct and the existence of  
93 other civil awards against the defendant for the same conduct.

94 (g) The seller of a product other than the manufacturer  
95 shall not be liable for punitive damages unless the seller  
96 exercised substantial control over that aspect of the design,  
97 testing, manufacture, packaging or labeling of the product that  
98 caused the harm for which recovery of damages is sought; the  
99 seller altered or modified the product, and the alteration or  
100 modification was a substantial factor in causing the harm for  
101 which recovery of damages is sought; the seller had actual  
102 knowledge of the defective condition of the product at the time he  
103 supplied same; or the seller made an express factual  
104 representation about the aspect of the product which caused the  
105 harm for which recovery of damages is sought.

106 (h) No award of punitive damages shall exceed the

107 greater of two (2) times the amount of total economic and  
108 noneconomic damages awarded to the plaintiff in the action or Two  
109 Hundred Fifty Thousand Dollars (\$250,000.00).

110 (i) Except as may be otherwise provided in paragraph  
111 (j) of this subsection, only one (1) award for punitive damages  
112 may be made against a defendant for the same act, decision,  
113 omission or course of conduct. In any action for harm caused by  
114 defect in a product, punitive damages may not be awarded against a  
115 defendant if such damages have been awarded in any prior action  
116 against that defendant for the same defect. For purposes of this  
117 section, identical defects in individual units of a manufacturer's  
118 products shall be deemed to be the same defect.

119 (j) The provision limiting awards for punitive damages  
120 as described in paragraph (i) shall not apply if the claimant  
121 proves by clear and convincing evidence that new evidence  
122 concerning the defendant's conduct justifies an award of  
123 additional punitive damages. New evidence means evidence not  
124 available to the claimant in the first action in which punitive  
125 damages were awarded.

126 (k) Except as otherwise provided in paragraph (m) of  
127 this section, punitive damages shall not be awarded against a  
128 defendant for any activity which is subject to regulation by any  
129 agency of the United States or the State of Mississippi, if the  
130 regulated activity was in compliance with applicable regulations  
131 of the United States and this state.

132 (l) Except as otherwise provided in paragraph (m) of  
133 this section, punitive damages shall not be awarded against a  
134 manufacturer or product seller if the aspect of the product's  
135 manufacture, design, formulation, inspection, testing, packaging,  
136 labeling or warning which caused the claimant's harm complied  
137 with:

138 (i) Any federal statute in effect at the time the  
139 product was produced;

140           (ii) Any administrative regulation in effect at  
141 the time the product was produced that was promulgated by an  
142 agency of the federal government which had responsibility to  
143 regulate the safety of the product or to establish safety  
144 standards for the product pursuant to a federal statute;

145           (iii) Any approval or certification made by an  
146 agency of the federal government before the product was marketed;  
147 or

148           (iv) Any state or local statute, ordinance, agency  
149 regulation, agency certification applicable to the place where the  
150 harm to the plaintiff allegedly occurred.

151           (m) The prohibition against awarding punitive damages  
152 in the circumstances described in paragraph (k) or (l) of this  
153 subsection shall not apply when the plaintiff proves by clear and  
154 convincing evidence that the defendant:

155           (i) Knowingly and in violation of applicable state  
156 or federal agency regulations withheld or misrepresented  
157 information required to be submitted to the agency, which  
158 information was material and relevant to the harm in question; or

159           (ii) Made an illegal payment to an official of the  
160 federal agency for the purpose of securing approval of the  
161 activity or product as described in paragraph (1) (iii) of this  
162 subsection.

163           (2) In any action for either personal injury, or wrongful  
164 death pursuant to Section 11-7-13, the prevailing plaintiff may be  
165 awarded compensatory damages for economic damages incurred by the  
166 injured plaintiff; and noneconomic damages suffered by the injured  
167 plaintiff not to exceed Two Hundred Fifty Thousand Dollars  
168 (\$250,000.00).

169           (a) "Economic damages" means objectively verifiable  
170 pecuniary damages arising from medical expenses and medical care,  
171 rehabilitation services, custodial care, burial costs, loss of  
172 past, present or future earnings or earning capacity, loss of

173 past, present or future income or profits, loss of use of  
174 property, costs of repair or replacement of property, costs of  
175 obtaining substitute domestic services, loss of employment, loss  
176 of business or employment opportunities, and other objectively  
177 verifiable monetary losses.

178 (b) "Noneconomic damages" means damages arising from  
179 pain, suffering, inconvenience, physical impairment,  
180 disfigurement, mental anguish, emotional distress, loss of society  
181 and companionship, loss of consortium, loss of enjoyment of life,  
182 injury to reputation, humiliation, other nonpecuniary damages, and  
183 any other theory of damages which are not objectively verifiable.  
184 It does not include any punitive damages.

185 \* \* \*

186 (3) When an attorney is compensated on a contingent fee  
187 basis in any action for either personal injury or wrongful death,  
188 his contingent fees shall not exceed forty percent (40%) of the  
189 first Fifty Thousand Dollars (\$50,000.00) recovered; Thirty-three  
190 and one-third percent (33 1/3%) of the next Fifty Thousand Dollars  
191 (\$50,000.00) recovered; Twenty-five percent (25%) of the next Five  
192 Hundred Thousand Dollars (\$500,000.00) recovered; and Fifteen  
193 percent (15%) of any amount recovered in excess of Six Hundred  
194 Thousand Dollars (\$600,000.00). These limitations shall apply  
195 whether the recovery of damages is by settlement, arbitration,  
196 mediation or judgment, or whether the person for whom the recovery  
197 is made is an adult, a minor or a person of unsound mind. The  
198 amount recovered shall be computed by first deducting all  
199 disbursements for litigation expenses incurred in connection with  
200 the filing and prosecution of a personal injury action, and the  
201 final contingent fee shall be calculated on the aggregate sum of  
202 that amount, regardless of the number of personal injury  
203 claimants.

204 SECTION 2. Section 11-7-13, Mississippi Code of 1972, is  
205 amended as follows:

206 11-7-13. Whenever the death of any person shall be caused by  
207 any real, wrongful or negligent act or omission, or by such unsafe  
208 machinery, way or appliances as would, if death had not ensued,  
209 have entitled the party injured or damaged thereby to maintain an  
210 action and recover damages in respect thereof, or whenever the  
211 death of any person shall be caused by the breach of any warranty,  
212 express or implied, of the purity or fitness of any foods, drugs,  
213 medicines, beverages, tobacco or any and all other articles or  
214 commodities intended for human consumption, as would, had the  
215 death not ensued, have entitled the person injured or made ill or  
216 damaged thereby, to maintain an action and recover damages in  
217 respect thereof, and such deceased person shall have left a widow  
218 or children or both, or husband or father or mother, or sister, or  
219 brother, the person or corporation, or both that would have been  
220 liable if death had not ensued, and the representatives of such  
221 person shall be liable for damages, notwithstanding the death, and  
222 the fact that death was instantaneous shall in no case affect the  
223 right of recovery. The action for such damages may be brought in  
224 the name of the personal representative of the deceased person for  
225 the benefit of all persons entitled under the law to recover, or  
226 by widow for the death of her husband, or by the husband for the  
227 death of the wife, or by the parent for the death of a child, or  
228 in the name of a child, or in the name of a child for the death of  
229 a parent, or by a brother for the death of a sister, or by a  
230 sister for the death of a brother, or by a sister for the death of  
231 a sister, or a brother for the death of a brother, or all parties  
232 interested may join in the suit, and there shall be but one (1)  
233 suit for the same death which shall ensue for the benefit of all  
234 parties concerned, but the determination of such suit shall not  
235 bar another action unless it be decided on its merits. In such  
236 action the party or parties suing shall recover such damages  
237 allowable by law as the jury may determine to be just, taking into  
238 consideration all the damages of every kind to the decedent and

239 all damages of every kind to any and all parties interested in the  
240 suit. In no event shall any noneconomic damages awarded under  
241 this section exceed Two Hundred Fifty Thousand (\$250,000.00). In  
242 no event shall any punitive damages awarded under this section  
243 exceed the greater of two (2) times the amount of the total of  
244 economic and noneconomic damages awarded to plaintiff or Two  
245 Hundred Fifty Thousand Dollars (\$250,000.00).

246 This section shall apply to all personal injuries of servants  
247 and employees received in the service or business of the master or  
248 employer, where such injuries result in death, and to all deaths  
249 caused by breach of warranty, either express or implied, of the  
250 purity and fitness of foods, drugs, medicines, beverages, tobacco  
251 or other articles or commodities intended for human consumption.

252 Any person entitled to bring a wrongful death action may  
253 assert or maintain a claim for any breach of expressed warranty or  
254 for any breach of implied warranty. A wrongful death action may  
255 be maintained or asserted for strict liability in tort or for any  
256 cause of action known to the law for which any person,  
257 corporation, legal representative or entity would be liable for  
258 damages if death had not ensued.

259 In an action brought pursuant to the provisions of this  
260 section by the widow, husband, child, father, mother, sister or  
261 brother of the deceased, or by all interested parties, such party  
262 or parties may recover as damages property damages and funeral,  
263 medical or other related expenses incurred by or for the deceased  
264 as a result of such wrongful or negligent act or omission or  
265 breach of warranty, whether an estate has been opened or not. Any  
266 amount, but only such an amount, as may be recovered for property  
267 damage, funeral, medical or other related expenses shall be  
268 subject only to the payment of the debts or liabilities of the  
269 deceased for property damages, funeral, medical or other related  
270 expenses. All other damages recovered under the provisions of  
271 this section shall not be subject to the payment of the debts or



272 liabilities of the deceased, except as hereinafter provided, and  
273 such damages shall be distributed as follows:

274 Damages for the injury and death of a married man shall be  
275 equally distributed to his wife and children, and if he has no  
276 children all shall go to his wife; damages for the injury and  
277 death of a married woman shall be equally distributed to the  
278 husband and children, and if she has no children all shall go to  
279 the husband; and if the deceased has no husband or wife, the  
280 damages shall be equally distributed to the children; if the  
281 deceased has no husband, nor wife, nor children, the damages shall  
282 be distributed equally to the father, mother, brothers and  
283 sisters, or such of them as the deceased may have living at his or  
284 her death. If the deceased have neither husband, nor wife, nor  
285 children, nor father, nor mother, nor sister, nor brother, then  
286 the damages shall go to the legal representative, subject to debts  
287 and general distribution, and the fact that the deceased was  
288 instantly killed shall not affect the right of the legal  
289 representative to recover. All references in this section to  
290 children shall include descendants of a deceased child, such  
291 descendants to take the share of the deceased child by  
292 representation. There shall not be, in any case, a distinction  
293 between the kindred of the whole and half blood of equal degree.  
294 The provisions of this section shall apply to illegitimate  
295 children on account of the death of the mother and to the mother  
296 on account of the death of an illegitimate child or children, and  
297 they shall have all the benefits, rights and remedies conferred by  
298 this section on legitimates. The provisions of this section shall  
299 apply to illegitimate children on account of the death of the  
300 natural father and to the natural father on account of the death  
301 of the illegitimate child or children, and they shall have all the  
302 benefits, rights and remedies conferred by this section on  
303 legitimates, if the survivor has or establishes the right to  
304 inherit from the deceased under Section 91-1-15.

305 Any rights which a blood parent or parents may have under  
306 this section are hereby conferred upon and vested in an adopting  
307 parent or adopting parents surviving their deceased adopted child,  
308 just as if the child were theirs by the full blood and had been  
309 born to the adopting parents in lawful wedlock.

310 Notwithstanding any other statute or provision of law, all  
311 actions for injuries producing death shall be filed in the county  
312 in which the defendant or any of them may be found or in the  
313 county where the cause of action may occur or accrue and, if the  
314 defendant is a domestic corporation, in the county in which said  
315 corporation is domiciled or in the county where the cause of  
316 action may occur or accrue. For purposes of this section, an  
317 action for injuries producing death occurs or accrues in the  
318 county in which the defendant or defendants committed the real,  
319 wrongful or negligent act or omission, whether the resulting death  
320 occurred in that county or not.

321 SECTION 3. Section 11-7-15, Mississippi Code of 1972, is  
322 amended as follows:

323 11-7-15. In all actions hereafter brought for personal  
324 injuries, or where such injuries have resulted in death, or for  
325 injury to property, including actions for damages caused by  
326 products, the fact that the person injured, or the owner of the  
327 property, or person having control over the property may have been  
328 guilty of contributory negligence shall not bar a recovery, unless  
329 the negligence or fault of the person injured, or the owner of the  
330 property, or person having control of the property is equal to or  
331 greater than fifty percent (50%) of the proximate cause of the  
332 injury or damage for which recovery is sought, but damages shall  
333 be diminished by the jury in proportion to the amount of  
334 negligence attributable to the person injured, or the owner of the  
335 property, or the person having control over the property.

336 SECTION 4. Section 11-11-3, Mississippi Code of 1972, is  
337 amended as follows:

338           11-11-3. Civil actions against individual residents of  
339 Mississippi of which the circuit court has original jurisdiction  
340 shall be commenced in the county in which the defendant or any of  
341 them may be found or in the county where the cause of action  
342 accrued and, if the defendant is a domestic corporation, in the  
343 county in which said corporation has its principal place of  
344 business or in the county where the cause of action accrued,  
345 except where otherwise provided, and except actions of trespass on  
346 land, ejectment and actions for the statutory penalty for cutting  
347 and boxing trees and firing woods and actions for the actual value  
348 of trees cut which shall be brought in the county where the land  
349 or some part thereof is situated. If a civil action is brought in  
350 an improper county, such action may be transferred to the proper  
351 county pursuant to Section 11-11-17.

352           SECTION 5. Section 11-11-11, Mississippi Code of 1972, is  
353 amended as follows:

354           11-11-11. All civil actions for the recovery of damages  
355 brought against a nonresident or the representative of the  
356 nonresident in the state of Mississippi shall be commenced in the  
357 county in which the action accrued \* \* \* .

358           SECTION 6. Section 11-11-57, Mississippi Code of 1972, is  
359 amended as follows:

360           11-11-57. When venue is proper as to any party still a  
361 defendant, it is proper as to all defendants. When a defendant  
362 who has allowed venue to attach in a county is dismissed as a  
363 party defendant, the remaining defendants shall be entitled to a  
364 transfer of venue to another county in which venue is proper. If  
365 there is more than one county in which venue is proper, the  
366 plaintiff is entitled to decide the county of venue.

367           SECTION 7. Section 15-1-36, Mississippi Code of 1972, is  
368 amended as follows:

369           15-1-36. (1) For any claim accruing on or before June 30,  
370 1998, and except as otherwise provided in this section, no claim

371 in tort may be brought against a licensed physician, osteopath,  
372 dentist, hospital, nurse, pharmacist, podiatrist, optometrist or  
373 chiropractor for injuries or wrongful death arising out of the  
374 course of medical, surgical or other professional services unless  
375 it is filed within two (2) years from the date the alleged act,  
376 omission or neglect shall or with reasonable diligence might have  
377 been first known or discovered.

378 (2) For any claim accruing on or after July 1, 1998, and  
379 except as otherwise provided in this section, no claim in tort may  
380 be brought against a licensed physician, osteopath, dentist,  
381 hospital, nurse, pharmacist, podiatrist, optometrist or  
382 chiropractor for injuries or wrongful death arising out of the  
383 course of medical, surgical or other professional services unless  
384 it is filed within two (2) years from the date the alleged act,  
385 omission or neglect shall or with reasonable diligence might have  
386 been first known or discovered, and, except as described in  
387 paragraphs (a) and (b) of this subsection, in no event more than  
388 seven (7) years after the alleged act, omission or neglect  
389 occurred:

390 (a) In the event a foreign object introduced during a  
391 surgical or medical procedure has been left in a patient's body,  
392 the cause of action shall be deemed to have first accrued at, and  
393 not before, the time at which the foreign object is, or with  
394 reasonable diligence should have been, first known or discovered  
395 to be in the patient's body.

396 (b) In the event the cause of action shall have been  
397 fraudulently concealed from the knowledge of the person entitled  
398 thereto, the cause of action shall be deemed to have first accrued  
399 at, and not before, the time at which such fraud shall be, or with  
400 reasonable diligence should have been, first known or discovered.

401 (3) Except as otherwise provided in subsection (4) of this  
402 section, if at the time at which the cause of action shall or with  
403 reasonable diligence might have been first known or discovered,

404 the person to whom such claim has accrued shall be six (6) years  
405 of age or younger, then such minor or the person claiming through  
406 such minor may, notwithstanding that the period of time limited  
407 pursuant to subsections (1) and (2) of this section shall have  
408 expired, commence action on such claim at any time within two (2)  
409 years next after the time at which the minor shall have reached  
410 his sixth birthday, or shall have died, whichever shall have first  
411 occurred.

412 (4) If at the time at which the cause of action shall or  
413 with reasonable diligence might have been first known or  
414 discovered, the person to whom such claim has accrued shall be a  
415 minor without a parent or legal guardian, then such minor or the  
416 person claiming through such minor may, notwithstanding that the  
417 period of time limited pursuant to subsections (1) and (2) of this  
418 section shall have expired, commence action on such claim at any  
419 time within two (2) years next after the time at which the minor  
420 shall have a parent or legal guardian or shall have died,  
421 whichever shall have first occurred; provided, however, that in no  
422 event shall the period of limitation begin to run prior to such  
423 minor's sixth birthday unless such minor shall have died.

424 (5) If at the time at which the cause of action shall or  
425 with reasonable diligence might have been first known or  
426 discovered, the person to whom such claim has accrued shall be  
427 under the disability of unsoundness of mind, then such person or  
428 the person claiming through him may, notwithstanding that the  
429 period of time hereinbefore limited shall have expired, commence  
430 action on such claim at any time within two (2) years next after  
431 the time at which the person to whom the right shall have first  
432 accrued shall have ceased to be under the disability, or shall  
433 have died, whichever shall have first occurred.

434 (6) When any person who shall be under the disabilities  
435 mentioned in subsections (3), (4) and (5) of this section at the  
436 time at which his right shall have first accrued, shall depart

437 this life without having ceased to be under such disability, no  
438 time shall be allowed by reason of the disability of such person  
439 to commence action on the claim of such person beyond the period  
440 prescribed under Section 15-1-55, Mississippi Code of 1972.

441 (7) For the purposes of subsection (3) of this section, and  
442 only for the purposes of such subsection, the disability of  
443 infancy or minority shall be removed from and after the time a  
444 person has reached his sixth birthday.

445 (8) For the purposes of subsection (4) of this section, and  
446 only for the purposes of such subsection, the disability of  
447 infancy or minority shall be removed from and after the time a  
448 person has reached his sixth birthday or from and after the time  
449 such person shall have a parent or legal guardian, whichever  
450 occurs later, unless such disability is otherwise removed by law.

451 (9) In no event may any action be commenced to recover  
452 damage for malpractice or professional negligence more than ten  
453 (10) years after the date of the alleged act, omission or  
454 negligence.

455 (10) The limitation established by this section as to a  
456 licensed physician, osteopath, dentist, hospital or nurse shall  
457 apply only to actions the cause of which accrued on or after July  
458 1, 1976.

459 (11) The limitation established by this section as to  
460 pharmacists shall apply only to actions the cause of which accrued  
461 on or after July 1, 1978.

462 (12) The limitation established by this section as to  
463 podiatrists shall apply only to actions the cause of which accrued  
464 on or after July 1, 1979.

465 (13) The limitation established by this section as to  
466 optometrists and chiropractors shall apply only to actions the  
467 cause of which accrued on or after July 1, 1983.

468 (14) The limitation established by this section as to  
469 actions commenced on behalf of minors shall apply only to actions

470 the cause of which accrued on or after July 1, 1989.

471 (15) The limitation established by this section as to the  
472 ten-year statute of repose applicable to all malpractice or  
473 professional negligence shall apply only to actions the cause of  
474 which accrued on or after July 1, 1999.

475 SECTION 8. Section 15-1-49, Mississippi Code of 1972, is  
476 amended as follows:

477 15-1-49. (1) All actions for which no other period of  
478 limitation is prescribed shall be commenced within three (3) years  
479 next after the cause of such action accrued, and not after.

480 (2) In actions for which no other period of limitation is  
481 prescribed and which involve latent injury or disease, the cause  
482 of action does not accrue until the plaintiff has discovered, or  
483 by reasonable diligence should have discovered, the injury.

484 (3) The provisions of subsection (2) of this section shall  
485 apply to all pending and subsequently filed actions.

486 (4) In no event may any action be commenced to recover  
487 damages for actions to which this statute of limitation applies  
488 more than ten (10) years after the date of the alleged act,  
489 omission or negligence.

490 (5) Except as otherwise provided in subsections (6) and (7)  
491 of this section, if at the time at which the cause of action shall  
492 or with reasonable diligence might have been first known or  
493 discovered, the person to whom such claim has accrued shall be six  
494 (6) years of age or younger, then such minor or the person  
495 claiming through such minor may, notwithstanding that the period  
496 of time limited pursuant to subsection (1) of this section shall  
497 have expired, commence action on such claim at any time within  
498 three (3) years next after the time at which the minor shall have  
499 reached his sixth birthday, or shall have died, whichever shall  
500 have first occurred.

501 (6) If at the time at which the cause of action shall or  
502 with reasonable diligence might have been first known or

503 discovered, the person to whom such claim has accrued shall be a  
504 minor without a parent or legal guardian, then such minor or the  
505 person claiming through such minor may, notwithstanding that the  
506 period of time limited pursuant to subsection (1) of this section  
507 shall have expired, commence action on such claim at any time  
508 within three (3) years next after the time at which the minor  
509 shall have a parent or legal guardian or shall have died,  
510 whichever shall have first occurred; provided, however, that in no  
511 event shall the period of limitation begin to run prior to such  
512 minor's sixth birthday unless such minor shall have died.

513 (7) If at the time at which the cause of action shall or  
514 with reasonable diligence might have been first known or  
515 discovered, the person to whom such claim has accrued shall be  
516 under the disability of unsoundness of mind, then such person or  
517 the person claiming through him may, notwithstanding that the  
518 period of time herein before limited shall have expired, commence  
519 action on such claim at any time within three (3) years next after  
520 the time at which the person to whom the right shall have first  
521 accrued shall have ceased to be under the disability, or shall  
522 have died, whichever shall have first occurred.

523 (8) When any person who shall be under the disabilities  
524 mentioned in subsections (5), (6), and (7) of this section at the  
525 time which his right shall have first accrued, shall depart this  
526 life without having ceased to be under such disability, no time  
527 shall be allowed by reason of the disability of such person  
528 prescribed under Section 15-1-55.

529 (9) For the purposes of subsection (5) of this section, and  
530 only for the purposes of such subsection, the disability of  
531 infancy or minority shall be removed from and after the time a  
532 person has reached his sixth birthday.

533 (10) For the purposes of subsection (6) of this section, and  
534 only for the purposes of such subsection, the disability of  
535 infancy or minority shall be removed from and after the time a



536 person has reached his sixth birthday or from and after such  
537 person shall have a parent or legal guardian, whichever occurs  
538 later, unless such disability is otherwise removed by law.

539 (11) The limitation established by this section as to the  
540 ten-year statute of repose applicable to all negligence actions  
541 shall apply only to actions the cause of which accrued on or after  
542 July 1, 1999.

543 SECTION 9. Section 15-1-59, Mississippi Code of 1972, is  
544 amended as follows:

545 15-1-59. If any person entitled to bring any of the personal  
546 actions mentioned shall, at the time at which the cause of action  
547 accrued, be under the disability of infancy or unsoundness of  
548 mind, he may bring the actions within the times in this chapter  
549 respectively limited, after his disability shall be removed as  
550 provided by law. However, the saving in favor of persons under  
551 disability of unsoundness of mind shall never extend longer than  
552 twenty-one (21) years. The provisions of this section shall not  
553 be construed to expand or lengthen the limitations period  
554 applicable to persons under disabilities prescribed under Sections  
555 15-1-36 and 15-1-49.

556 SECTION 10. Section 85-5-7, Mississippi Code of 1972, is  
557 amended as follows:

558 85-5-7. (1) As used in this section "fault" means an act or  
559 omission of a person which is a proximate cause of injury or death  
560 to another person or persons, damages to property, tangible or  
561 intangible, or economic injury, including but not limited to  
562 negligence, malpractice, strict liability, absolute liability or  
563 failure to warn. "Fault" shall not include any tort which results  
564 from an act or omission committed with a specific wrongful intent.

565 (2) Except as may be otherwise provided in subsection (6) of  
566 this section, in any civil action based on fault, the liability of  
567 each defendant for damages shall be several only and shall not be  
568 joint; each defendant shall be liable only for the amount of

569 damages allocated to that defendant in direct proportion to that  
570 defendant's percentage of fault, and a separate judgment shall be  
571 rendered against the defendant for that amount. To determine the  
572 amount of judgment to be entered against each defendant, the trier  
573 of fact shall determine the total damages and shall also determine  
574 the percentage of fault of each party and nonparty, irrespective  
575 of whether such nonparty could have been made a party to the  
576 action, alleged to be at fault. The court, with regard to each  
577 defendant, shall multiply the total amount of damages by the  
578 percentage of each defendant's fault, and that amount shall be the  
579 maximum recoverable against that defendant.

580 (3) \* \* \* In assessing percentages of fault an employer and  
581 the employer's employee or a principal and the principal's agent  
582 shall be considered as one (1) defendant when the liability of  
583 such employer or principal has been caused by the wrongful or  
584 negligent act or omission of the employee or agent.

585 (4) Any defendant held jointly liable under this section  
586 shall have a right of contribution against fellow joint  
587 tort-feasors. A defendant shall be held responsible for  
588 contribution to other joint tort-feasors only for the percentage  
589 of fault assessed to such defendant.

590 (5) Nothing in this section shall eliminate or diminish any  
591 defenses or immunities which currently exist, except as expressly  
592 noted herein.

593 (6) Joint and several liability shall be imposed on all who  
594 consciously and deliberately pursue a common plan or design to  
595 commit a tortious act, or actively take part in it. Any person  
596 held jointly and severally liable under this section shall have a  
597 right of contribution from his fellow defendants acting in  
598 concert.

599 (7) In actions involving joint tort-feasors, the trier of  
600 fact shall determine the percentage of fault for each party  
601 alleged to be at fault.

602 (8) Nothing in this section shall be construed to create a  
603 cause of action. Nothing in this section shall be construed, in  
604 any way, to alter the immunity of any person.

605 SECTION 11. The following shall be codified as Section  
606 11-11-21, Mississippi Code of 1972:

607 11-11-21. (1) A cause of action for wrongful death, bodily  
608 injury, libel, slander, defamation, malicious prosecution, breach  
609 of a professional duty or fraud accrues only in the county where  
610 the wrongful act first occurs, not in any subsequent county where  
611 the plaintiff may suffer additional injuries, damages or death.

612 (2) A cause of action for breach of contract accrues only in  
613 the county where the breach first occurs, not in any subsequent  
614 county where the plaintiff may suffer additional injuries, damages  
615 or death.

616 (3) A cause of action for the breach of any insurance  
617 contract insuring against the loss of real or personal property  
618 accrues only in the county where the damage to the insured real or  
619 personal property first occurs, not in any subsequent county where  
620 the property may suffer additional damages. Any other cause of  
621 action for the breach of any insurance contract accrues only in  
622 the county where the loss first occurs, not in any subsequent  
623 county where the plaintiff may suffer additional injuries, damages  
624 or death.

625 SECTION 12. The following shall be codified as Section  
626 11-11-23, Mississippi Code of 1972:

627 11-11-23. (1) All civil actions brought by a resident of  
628 the State of Mississippi against a nonresident to recover damages  
629 of which the circuit court has original jurisdiction shall be  
630 commenced in the county in which the plaintiff resides, or, if the  
631 defendant is a nonresident corporation, in the county in which  
632 said corporation has its principal place of business.

633 (2) All civil actions brought by a nonresident of the State  
634 of Mississippi against another nonresident to recover damages of

635 which the circuit court has original jurisdiction shall be  
636 commenced in the county in which the nonresident defendant's agent  
637 for service of process is located or in the county where the  
638 nonresident defendant is served with process.

639 SECTION 13. Section 11-3-23 and Section 11-3-25, Mississippi  
640 Code of 1972, which provide for the assessment of a penalty on the  
641 appeal of certain judgments to the Supreme Court, are repealed.

642 SECTION 14. Section 11-11-5 and Section 11-11-7, Mississippi  
643 Code of 1972, which provide for proper venue in actions against  
644 railroads and other companies, and against insurance companies,  
645 are repealed.

646 SECTION 15. Section 11-11-13, Mississippi Code of 1972,  
647 which provides for proper venue in actions for damages against  
648 nonresident motorists, is repealed.

649 SECTION 16. This act shall take effect and be in force from  
650 and after July 1, 1999, and shall apply to causes of action which  
651 accrue on or after July 1, 1999.