

By: Representatives Chaney, Denny

To: Judiciary A

## HOUSE BILL NO. 638

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 15-1-49, MISSISSIPPI  
9 CODE OF 1972, TO INCORPORATE A STATUTE OF REPOSE IN THE STATUTES  
10 OF LIMITATIONS CONTAINED THEREIN; TO AMEND SECTION 15-1-59,  
11 MISSISSIPPI CODE OF 1972, TO LIMIT THE SAVING IN FAVOR OF PERSONS  
12 UNDER DISABILITIES; TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF  
13 1972, TO RESTRICT JOINT AND SEVERAL LIABILITY; TO REPEAL SECTIONS  
14 11-3-23 AND 11-3-25, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR  
15 THE ASSESSMENT OF A PENALTY ON CERTAIN JUDGMENTS APPEALED TO THE  
16 SUPREME COURT; AND FOR RELATED PURPOSES.

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

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

20 11-1-65. (1) In any action in which punitive damages are  
21 sought:

22 (a) Punitive damages may not be awarded if the claimant  
23 does not prove beyond a reasonable doubt that the defendant  
24 against whom punitive damages are sought acted with actual malice,  
25 gross negligence which evidences a willful, wanton or reckless  
26 disregard for the safety of others, or committed actual fraud.

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

31 (c) If, but only if, an award of compensatory damages  
32 has been made against a party, the court shall promptly commence  
33 an evidentiary hearing before the same trier of fact to determine

34 whether punitive damages may be considered.

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

39 (e) In all cases involving an award of punitive  
40 damages, the fact finder, in determining the amount of punitive  
41 damages, shall consider, to the extent relevant, the following:  
42 the defendant's financial condition and net worth; the nature and  
43 reprehensibility of the defendant's wrongdoing at the time and  
44 under the circumstances when it was committed, for example, the  
45 impact of the defendant's conduct on the plaintiff, or the  
46 relationship of the defendant to the plaintiff; the defendant's  
47 awareness of the amount of harm being caused and the defendant's  
48 motivation in causing such harm; the duration of the defendant's  
49 misconduct and whether the defendant attempted to conceal such  
50 misconduct; whether the defendant's conduct is found to have  
51 caused harm to the plaintiff is at present continuing with respect  
52 to the plaintiff or other individuals; and any other circumstances  
53 shown by the evidence that bear on determining a proper amount of  
54 punitive damages. The trier of fact shall be instructed that the  
55 primary purpose of punitive damages is to punish the wrongdoer and  
56 deter similar misconduct in the future by the defendant and others  
57 while the purpose of compensatory damages is to make the plaintiff  
58 whole.

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

64 (ii) In determining whether the award is  
65 excessive, the court shall take into consideration the following  
66 factors:

67 1. Whether there is a reasonable relationship  
68 between the punitive damage award and the harm likely to result  
69 from the defendant's conduct as well as the harm that actually  
70 occurred;

71                   2. The degree of reprehensibility of the  
72 defendant's conduct, the duration of that conduct, the defendant's  
73 awareness, any concealment, and the existence and frequency of  
74 similar past conduct;

75                   3. The financial condition and net worth of  
76 the defendant; and

77                   4. In mitigation, the imposition of criminal  
78 sanctions on the defendant for its conduct and the existence of  
79 other civil awards against the defendant for the same conduct.

80                   (g) The seller of a product other than the manufacturer  
81 shall not be liable for punitive damages unless the seller  
82 exercised substantial control over that aspect of the design,  
83 testing, manufacture, packaging or labeling of the product that  
84 caused the harm for which recovery of damages is sought; the  
85 seller altered or modified the product, and the alteration or  
86 modification was a substantial factor in causing the harm for  
87 which recovery of damages is sought; the seller had actual  
88 knowledge of the defective condition of the product at the time he  
89 supplied same; or the seller made an express factual  
90 representation about the aspect of the product which caused the  
91 harm for which recovery of damages is sought.

92                   (h) No award of punitive damages shall exceed the  
93 greater of five (5) times the amount of total economic damages  
94 awarded to the plaintiff in the action or Two Hundred Fifty  
95 Thousand Dollars (\$250,000.00). "Economic damages" means  
96 objectively verifiable pecuniary damages arising from medical  
97 expenses and medical care, rehabilitation services, custodial  
98 care, burial costs, loss of past, present or future earnings or  
99 earning capacity, loss of past, present or future income or  
100 profits, loss of use of property, costs of repair or replacement  
101 of property, costs of obtaining substitute domestic services, loss  
102 of employment, loss of business or employment opportunities, and  
103 other objectively verifiable monetary losses. Economic damages do

104 not mean damages arising from pain, suffering, inconvenience,  
105 physical impairment, disfigurement, mental anguish, emotional  
106 distress, loss of society and companionship, loss of consortium,  
107 loss of enjoyment of life, injury to reputation, humiliation,  
108 other nonpecuniary damages, and any other theory of damages which  
109 are not objectively verifiable; they also do not include any  
110 punitive damages.

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

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

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

133 (l) Except as otherwise provided in paragraph (m) of  
134 this section, punitive damages shall not be awarded against a  
135 manufacturer or product seller if the aspect of the product's  
136 manufacture, design, formulation, inspection, testing, packaging,

137 labeling or warning which caused the claimant's harm complied  
138 with:

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

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

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

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

152 (m) The prohibition against awarding punitive damages  
153 in the circumstances described in paragraph (k) or (l) of this  
154 subsection shall not apply when the plaintiff proves beyond a  
155 reasonable doubt that the defendant:

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

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

164 (2) In any action for either wrongful death pursuant to  
165 Section 11-7-13, or personal injury, the prevailing plaintiff may  
166 be awarded compensatory damages for economic damages incurred by  
167 the injured plaintiff, and noneconomic damages suffered by the  
168 injured plaintiff not to exceed Two Hundred Fifty Thousand Dollars  
169 (\$250,000.00).

170           (a) "Economic damages" means objectively verifiable  
171 pecuniary damages arising from medical expenses and medical care,  
172 rehabilitation services, custodial care, burial costs, loss of  
173 past, present or future earnings or earning capacity, loss of  
174 past, present or future income or profits, loss of use of  
175 property, costs of repair or replacement of property, costs of  
176 obtaining substitute domestic services, loss of employment, loss  
177 of business or employment opportunities, and other objectively  
178 verifiable monetary losses.

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

186           (3) When an attorney is compensated on a contingent fee  
187 basis in any action for either personal injury or wrongful death,  
188 the 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 Dollars  
242 (\$250,000.00). In no event shall any punitive damages awarded  
243 under this section exceed the greater of five (5) times the amount  
244 of the total of economic 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 15-1-49, Mississippi Code of 1972, is  
337 amended as follows:

338 15-1-49. (1) All actions for which no other period of  
339 limitation is prescribed shall be commenced within three (3) years  
340 next after the cause of such action accrued, and not after.

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

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

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

351 (5) Except as otherwise provided in subsections (6) and (7)  
352 of this section, if at the time at which the cause of action shall  
353 or with reasonable diligence first might have been known or  
354 discovered, the person to whom such claim has accrued shall be six  
355 (6) years of age or younger, then such minor or the person  
356 claiming through such minor, notwithstanding that the period of  
357 time limited pursuant to subsection (1) of this section shall have  
358 expired, may commence action on such claim at any time within  
359 three (3) years next after the time at which the minor shall have  
360 reached his sixth birthday, or shall have died, whichever shall  
361 have first occurred.

362 (6) If at the time at which the cause of action shall or  
363 with reasonable diligence first might have been known or  
364 discovered, the person to whom such claim has accrued shall be a  
365 minor without a parent or legal guardian, then such minor or the  
366 person claiming through such minor, notwithstanding that the  
367 period of time limited pursuant to subsection (1) of this section

368 shall have expired, may commence action on such claim at any time  
369 within three (3) years next after the time at which the minor  
370 shall have a parent or legal guardian or shall have died,  
371 whichever shall have first occurred; provided, however, that in no  
372 event shall the period of limitation begin to run prior to such  
373 minor's sixth birthday unless such minor shall have died.

374 (7) If at the time at which the cause of action shall or  
375 with reasonable diligence first might have been known or  
376 discovered, the person to whom such claim has accrued shall be  
377 under the disability of unsoundness of mind, then such person or  
378 the person claiming through him, notwithstanding that the period  
379 of time hereinbefore limited shall have expired, may commence  
380 action on such claim at any time within three (3) years next after  
381 the time at which the person to whom the right shall have first  
382 accrued shall have ceased to be under the disability, or shall  
383 have died, whichever shall have first occurred.

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

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

394 (10) For the purposes of subsection (6) of this section, and  
395 only for the purposes of such subsection, the disability of  
396 infancy or minority shall be removed from and after the time a  
397 person has reached his sixth birthday, or from and after the time  
398 such person shall have a parent or legal guardian, whichever  
399 occurs later, unless such disability is otherwise removed by law.

400 (11) The limitation established by subsection (4) of this

401 section as to the ten-year statute of repose applicable to all  
402 negligence actions shall apply only to actions the cause of which  
403 accrued on or after July 1, 1999.

404 SECTION 5. Section 15-1-59, Mississippi Code of 1972, is  
405 amended as follows:

406 15-1-59. If any person entitled to bring any of the personal  
407 actions mentioned shall, at the time at which the cause of action  
408 accrued, be under the disability of infancy or unsoundness of  
409 mind, he may bring the actions within the times in this chapter  
410 respectively limited, after his disability shall be removed as  
411 provided by law. However, the saving in favor of persons under  
412 disability of unsoundness of mind shall never extend longer than  
413 twenty-one (21) years. The provisions of this section shall not  
414 be construed to expand or lengthen the limitations periods  
415 applicable to persons under disabilities prescribed under Sections  
416 15-1-36 and 15-1-49.

417 SECTION 6. Section 85-5-7, Mississippi Code of 1972, is  
418 amended as follows:

419 85-5-7. (1) As used in this section, "fault" means an act  
420 or omission of a person which is a proximate cause of injury or  
421 death to another person or persons, damages to property, tangible  
422 or intangible, or economic injury, including but not limited to  
423 negligence, malpractice, strict liability, absolute liability or  
424 failure to warn. "Fault" shall not include any tort which results  
425 from an act or omission committed with a specific wrongful intent.

426 (2) Except as may be otherwise provided in subsection (6) of  
427 this section, in any civil action based on fault, the liability of  
428 each defendant for damages shall be several only and shall not be  
429 joint; each defendant shall be liable only for the amount of  
430 damages allocated to that defendant in direct proportion to that  
431 defendant's percentage of fault, and a separate judgment shall be  
432 rendered against the defendant for that amount. To determine the  
433 amount of judgment to be entered against each defendant, the trier

434 of fact shall determine the total damages and shall also determine  
435 the percentage of fault of each party and nonparty, irrespective  
436 of whether such nonparty could have been made a party to the  
437 action or alleged to be at fault, irrespective of whether such  
438 nonparty could have been made a party to the action. The court,  
439 with regard to each defendant, shall multiply the total amount of  
440 damages by the percentage of each defendant's fault, and that  
441 amount shall be the maximum recoverable against that defendant.

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

447 (4) Any defendant held jointly liable under this section  
448 shall have a right of contribution against fellow joint  
449 tort-feasors. A defendant shall be held responsible for  
450 contribution to other joint tort-feasors only for the percentage  
451 of fault assessed to such defendant.

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

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

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

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

467           SECTION 7. Sections 11-3-23 and 11-3-25, Mississippi Code of  
468 1972, which provide for the assessment of a penalty on the appeal  
469 of certain judgments to the Supreme Court, are repealed.

470           SECTION 8. The provisions of this act are remedial in nature  
471 and shall be applied to all causes of action pending or filed on  
472 or after July 1, 1999, including matters on appeal.