

By: Senator(s) Hawks

To: Judiciary

SENATE BILL NO. 2427

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.