

By: Representatives Smith (39th), Moore (60th), Cameron, Eakes, Rotenberry, Jennings, Chism, Nicholson, Lott, Davis, Formby, Robinson (84th), Robertson, Guice, Wells-Smith

To: Judiciary A

HOUSE BILL NO. 1498

1 AN ACT TO CREATE SECTION 11-11-61, MISSISSIPPI CODE OF 1972,  
2 TO ENACT CERTAIN LIMITATIONS ON JOINDER OF PLAINTIFFS; TO AMEND  
3 SECTION 11-1-63, MISSISSIPPI CODE OF 1972, TO REVISE PRODUCT  
4 LIABILITY OF A MANUFACTURER; TO ENACT SECTION 11-1-64, MISSISSIPPI  
5 CODE OF 1972, TO REVISE PRODUCT LIABILITY OF A PRODUCT SELLER; TO  
6 AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO REVISE THE  
7 AWARD OF PUNITIVE DAMAGES IN A CIVIL ACTION AND TO IMPOSE A  
8 LIMITATION ON THE AMOUNT THEREOF; TO CREATE SECTION 11-1-67,  
9 MISSISSIPPI CODE OF 1972, TO IMPOSE A LIMITATION ON THE AMOUNT OF  
10 NONECONOMIC DAMAGES THAT MAY BE AWARDED IN A CIVIL ACTION; TO  
11 AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE THE  
12 ASSESSMENT OF JOINT AND SEVERAL LIABILITY; TO CREATE A LIMITATION  
13 ON LIABILITY OF A PREMISES OWNER UNDER CERTAIN CIRCUMSTANCES; AND  
14 FOR RELATED PURPOSES.

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

16 **SECTION 1.** The following shall be codified as Section  
17 11-11-61, Mississippi Code of 1972:

18 11-11-61. (1) In all civil actions for the recovery of  
19 damages brought in any court within the State of Mississippi by a  
20 resident or nonresident of the State of Mississippi, persons may  
21 not join as plaintiffs in one (1) action unless:

22 (a) They assert a common undivided interest in the  
23 claim against the defendant(s); or

24 (b) Their claims arose out of a single transaction or  
25 occurrence.

26 (2) If the application of this section, or of any portion of  
27 it, to any person or circumstance is held invalid, the invalidity  
28 shall not affect the application of this section to other persons  
29 or circumstances which can be given effect without the invalid  
30 provision or application.

31 (3) This section shall apply to any civil action pending or  
32 filed on or after July 1, 2002.



33           **SECTION 2.** Section 11-1-63, Mississippi Code of 1972, is  
34 amended as follows:

35           11-1-63. In any action for damages caused by a product  
36 except for commercial damage to the product itself:

37           (a) The manufacturer \* \* \* of the product shall not be  
38 liable if the claimant does not prove by the preponderance of the  
39 evidence that at the time the product left the control of the  
40 manufacturer \* \* \*:

41           (i) 1. The product was defective because it  
42 deviated in a material way from the manufacturer's specifications  
43 or from otherwise identical units manufactured to the same  
44 manufacturing specifications, or

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

47                           3. The product was designed in a defective  
48 manner, or

49                           4. The product breached an express warranty  
50 or failed to conform to other express factual representations upon  
51 which the claimant justifiably relied in electing to use the  
52 product; and

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

55           (iii) The defective and unreasonably dangerous  
56 condition of the product proximately caused the damages for which  
57 recovery is sought.

58           (b) A product is not defective in design or formulation  
59 if the harm for which the claimant seeks to recover compensatory  
60 damages was caused by an inherent characteristic of the product  
61 which is a generic aspect of the product that cannot be eliminated  
62 without substantially compromising the product's usefulness or  
63 desirability and which is recognized by the ordinary person with  
64 the ordinary knowledge common to the community.



65           (c) (i) In any action alleging that a product is  
66 defective because it failed to contain adequate warnings or  
67 instructions pursuant to paragraph (a)(i)2 of this section, the  
68 manufacturer \* \* \* shall not be liable if the claimant does not  
69 prove by the preponderance of the evidence that at the time the  
70 product left the control of the manufacturer \* \* \*, the  
71 manufacturer \* \* \* knew or in light of reasonably available  
72 knowledge should have known about the danger that caused the  
73 damage for which recovery is sought and that the ordinary user or  
74 consumer would not realize its dangerous condition.

75           (ii) An adequate product warning or instruction is  
76 one that a reasonably prudent person in the same or similar  
77 circumstances would have provided with respect to the danger and  
78 that communicates sufficient information on the dangers and safe  
79 use of the product, taking into account the characteristics of,  
80 and the ordinary knowledge common to an ordinary consumer who  
81 purchases the product; or in the case of a prescription drug,  
82 medical device or other product that is intended to be used only  
83 under the supervision of a physician or other licensed  
84 professional person, taking into account the characteristics of,  
85 and the ordinary knowledge common to, a physician or other  
86 licensed professional who prescribes the drug, device or other  
87 product.

88           (d) In any action alleging that a product is defective  
89 pursuant to paragraph (a) of this section, the manufacturer \* \* \*  
90 shall not be liable if the claimant (i) had knowledge of a  
91 condition of the product that was inconsistent with his safety;  
92 (ii) appreciated the danger in the condition; and (iii)  
93 deliberately and voluntarily chose to expose himself to the danger  
94 in such a manner to register assent on the continuance of the  
95 dangerous condition.

96           (e) In any action alleging that a product is defective  
97 pursuant to paragraph (a)(i)2 of this section, the



98 manufacturer \* \* \* shall not be liable if the danger posed by the  
99 product is known or is open and obvious to the user or consumer of  
100 the product, or should have been known or open and obvious to the  
101 user or consumer of the product, taking into account the  
102 characteristics of, and the ordinary knowledge common to, the  
103 persons who ordinarily use or consume the product.

104 (f) In any action alleging that a product is defective  
105 because of its design pursuant to paragraph (a)(i)3 of this  
106 section, the manufacturer \* \* \* shall not be liable if the  
107 claimant does not prove by the preponderance of the evidence that  
108 at the time the product left the control of the  
109 manufacturer \* \* \*:

110 (i) The manufacturer \* \* \* knew, or in light of  
111 reasonably available knowledge or in the exercise of reasonable  
112 care should have known, about the danger that caused the damage  
113 for which recovery is sought; and

114 (ii) The product failed to function as expected  
115 and there existed a feasible design alternative that would have to  
116 a reasonable probability prevented the harm. A feasible design  
117 alternative is a design that would have to a reasonable  
118 probability prevented the harm without impairing the utility,  
119 usefulness, practicality or desirability of the product to users  
120 or consumers.

121 \* \* \*

122 (g) Nothing in this section shall be construed to  
123 eliminate any common law defense to an action for damages caused  
124 by a product.

125 **SECTION 3.** The following shall be codified as Section  
126 11-1-64, Mississippi Code of 1972:

127 11-1-64. (1) In any civil action alleging damages caused by  
128 a defective product, a product seller other than a manufacturer  
129 shall be liable to a claimant only if the claimant establishes:



130 (a) The product that allegedly caused the harm that is  
131 the subject of the complaint was sold by the product seller;

132 (b) The product seller failed to exercise reasonable  
133 care with respect to the sale of the product; and

134 (c) The failure to exercise reasonable care was a  
135 proximate cause of the harm to the claimant.

136 (2) A product seller shall not be considered to have failed  
137 to exercise reasonable care with respect to a product based upon  
138 an alleged failure to inspect the product, if there was no  
139 reasonable opportunity to inspect the product; or the inspection,  
140 in the exercise of reasonable care, would not have revealed that  
141 the product was defective.

142 (3) Nothing in this section shall be construed to eliminate  
143 any common law defense to an action for damages caused by a  
144 product.

145 (4) If the application of this section, or of any portion of  
146 it, to any person or circumstance is held invalid, the invalidity  
147 shall not affect the application of this section to other persons  
148 or circumstances which can be given effect without the invalid  
149 provision or application.

150 (5) This section shall apply to any civil action pending or  
151 filed on or after July 1, 2002.

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

154 11-1-65. (1) For the purposes of this section, the  
155 following words and phrases shall have the meanings ascribed  
156 herein unless the context clearly requires otherwise:

157 (a) "Clear and convincing evidence" is evidence that  
158 leaves no serious or substantial doubt about the correctness of  
159 the conclusions drawn from the evidence. It is more than a  
160 preponderance of evidence, but is less than evidence beyond a  
161 reasonable doubt.



162           (b) "Compensatory damages" are damages intended to make  
163 an injured party whole and no more. Compensatory damages include  
164 general and special damages, but do not include nominal damages.

165           (c) "Malice" is either conduct that is specifically  
166 intended to cause tangible or intangible serious injury to a  
167 plaintiff or conduct that is carried out by the defendant with a  
168 flagrant indifference to the rights of the plaintiff and with a  
169 subjective awareness that such conduct will result in tangible  
170 serious injury.

171           (d) "Nominal damages" are damages that are not designed  
172 to compensate a plaintiff and are less than Five Hundred Dollars  
173 (\$500.00).

174           (e) "Punitive damages" are exemplary or vindicating  
175 damages that are awarded against a party in a civil action to  
176 penalize that party and to deter others from similar conduct in  
177 the future. Punitive damages do not include compensatory damages  
178 or nominal damages.

179           (2) The following general provisions apply to any award of  
180 punitive damages in the State of Mississippi:

181           (a) An award of punitive damages must be specifically  
182 requested in the complaint.

183           (b) Punitive damages may not be awarded if the claimant  
184 does not prove by clear and convincing evidence that the defendant  
185 against whom punitive damages are sought acted with actual malice  
186 or gross negligence that evidences a willful, wanton or reckless  
187 disregard for the safety of others, or committed actual fraud.

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

192           (d) If, but only if, an award of compensatory damages  
193 has been made against a party, and the court finds that there is  
194 sufficient evidence to proceed, then the court may promptly



195 commence an evidentiary hearing before the same trier of fact to  
196 determine whether punitive damages may be considered.

197 (e) After hearing any additional evidence that may  
198 support an award of punitive damages, the court shall then again  
199 determine whether the issue of punitive damages may be submitted  
200 to the trier of fact; and, if so, the trier of fact shall  
201 determine whether to award punitive damages and in what amount.

202 (f) In all cases involving an award of punitive  
203 damages, no evidence of or relating to the financial condition or  
204 size of the defendant shall be admissible before the trier of fact  
205 unless and until the defendant elects to offer evidence on these  
206 issues in mitigation of the size of any punitive damages award.

207 (g) In all cases involving an award of punitive  
208 damages, the fact finder, in determining the amount of punitive  
209 damages, may consider, to the extent relevant, the following:

210 (i) \* \* \* The nature and reprehensibility of the  
211 defendant's wrongdoing at the time and under the circumstances  
212 when it was committed, for example, the impact of the defendant's  
213 conduct on the plaintiff, or the relationship of the defendant to  
214 the plaintiff; the defendant's awareness of the amount of harm  
215 being caused and the defendant's motivation in causing such harm;  
216 the duration of the defendant's misconduct and whether the  
217 defendant attempted to conceal such misconduct;

218 (ii) Whether the defendant's conduct was found to  
219 have caused harm to the plaintiff is at present continuing with  
220 respect to the plaintiff or other individuals;

221 (iii) The severity of the harm caused by the  
222 defendant;

223 (iv) The extent to which the plaintiff's own  
224 conduct contributed to the harm;

225 (v) The profitability of the conduct to the  
226 defendant;



227                   (vi) Prior awards of compensatory and punitive  
228 damages to persons similarly situated to the plaintiff; and

229                   (vii) \* \* \* Any other circumstances shown by the  
230 evidence that bear on determining a proper amount of punitive  
231 damages.

232                   (h) The trier of fact shall be instructed that the sole  
233 purpose of punitive damages is to punish the wrongdoer and to  
234 deter possible similar misconduct in the future by the defendant  
235 and no amount should be awarded to compensate the plaintiff \* \* \*.

236                   (i) If a verdict is rendered awarding punitive damages,  
237 the trial court shall ascertain whether the award is reasonable in  
238 its amount and rationally related to any harm actually caused, and  
239 the purpose to punish what occurred giving rise to the award and  
240 to deter its repetition by the defendant and others, and then  
241 enter judgment, reduce the award, or set the award aside, as  
242 appropriate.

243                   (j) In determining whether the award is appropriate,  
244 the court shall take into consideration the \* \* \* factors set  
245 forth in subsection (g) above in addition to the financial  
246 condition and net worth of the defendant, even if not admitted  
247 before the trier of fact.

248                   \* \* \*

249                   (k) The seller of a product other than the manufacturer  
250 shall not be liable for punitive damages unless the seller  
251 exercised substantial control over that aspect of the design,  
252 testing, manufacture, packaging or labeling of the product that  
253 caused the harm for which recovery of damages is sought; the  
254 seller altered or modified the product, and the alteration or  
255 modification was a substantial factor in causing the harm for  
256 which recovery of damages is sought; the seller had actual  
257 knowledge of the defective condition of the product at the time he  
258 supplied same; or the seller made an express factual





259 representation about the aspect of the product which caused the  
260 harm for which recovery of damages is sought.

261 \* \* \*

262 (1) Punitive damages shall not exceed the greater of  
263 three (3) times the amount of the total compensatory damages  
264 awarded to the plaintiff or Five Hundred Thousand Dollars  
265 (\$500,000.00), whichever is greater; and, if the defendant is an  
266 individual or a business with less than fifty (50) full-time  
267 employees, no award of punitive damages shall exceed three (3)  
268 times the amount of the plaintiff's compensatory damages or Five  
269 Hundred Thousand Dollars (\$500,000.00), whichever is less, unless  
270 the finder of fact and court find by clear and convincing evidence  
271 that the defendant acted with criminal intent to cause serious  
272 physical bodily injury. This restriction shall not be disclosed  
273 to the trier of fact but shall be applied by the court to any  
274 punitive damages awarded.

275 (m) Only one (1) award for punitive damages may be made  
276 against a defendant for the same act, decision, omission or course  
277 of conduct. Punitive damages may not be awarded against a  
278 defendant if punitive damages have been awarded in any prior  
279 action against that defendant for the same act, decision,  
280 omission, or course of conduct. For purposes of this section,  
281 identical defects in individual units of a manufacturer's products  
282 shall be deemed to be the same act, decision, omission or course  
283 of conduct.

284 (n) Punitive damages shall not be awarded against a  
285 defendant for any activity that is subject to regulation by any  
286 agency of the United States or the State of Mississippi, if the  
287 regulated activity was in compliance with applicable regulations  
288 of the United States and this state.

289 (o) Punitive damages shall not be awarded against a  
290 manufacturer or product seller if the aspect of the product's  
291 manufacture, design, formulation, inspection, testing, packaging,



292 labeling or warning which caused the claimant's harm complied  
293 with:

294 (i) Any federal statute in effect at the time the  
295 product was produced;

296 (ii) Any administrative regulation in effect at  
297 the time the product was produced that was promulgated by an  
298 agency of the federal government which had responsibility to  
299 regulate the safety of the product or to establish safety  
300 standards for the product pursuant to a federal statute;

301 (iii) Any approval or certification made by an  
302 agency of the federal government before the product was marketed;  
303 or

304 (iv) Any state or local statute, ordinance, agency  
305 regulation, agency certification applicable to the place where the  
306 harm to the plaintiff allegedly occurred.

307 (p) Punitive damages shall not be awarded if a drug,  
308 device, food, food additive or a combination of these items caused  
309 the claimant's harm if:

310 (i) The item was subject to premarket approval or  
311 licensure by the Federal Food and Drug Administration under the  
312 "Federal Food, Drug, and Cosmetic Act," 21 USCS Section 301, et  
313 seq., or the "Public Health Service Act," 42 USCS Section 201, et  
314 seq., and was approved or licensed; or

315 (ii) Is generally recognized as safe and effective  
316 pursuant to conditions established by the Federal Food and Drug  
317 Administration and applicable regulation, including packaging and  
318 labeling regulations.

319 (q) The prohibition against awarding punitive damages  
320 in the circumstances described in paragraph (o) of this subsection  
321 (1) shall not apply when the plaintiff proves by clear and  
322 convincing evidence that the defendant:

323 (i) Knowingly and in violation of applicable state  
324 or federal agency regulations withheld or misrepresented



325 information required to be submitted to the agency, which  
326 information was material and relevant to the harm in question; or  
327 (ii) Made an illegal payment to an official of the  
328 federal agency for the purpose of securing approval of the  
329 activity or product as described in paragraph (1)(iii).

330 (2) If the application of this section, or of any portion of  
331 it, to any person or circumstance is held invalid, the invalidity  
332 shall not affect the application of this section to other persons  
333 or circumstances which can be given effect without the invalid  
334 provision or application.

335 (3) This section shall apply to any civil action pending or  
336 filed on or after July 1, 2002.

337 **SECTION 5.** The following shall be codified as Section  
338 11-1-67, Mississippi Code of 1972:

339 11-1-67. (1) This section shall be known and may be cited  
340 as the "Noneconomic Damages Awards Act."

341 (2) For the purposes of this section, the following words  
342 and phrases shall have the meanings ascribed herein unless the  
343 context clearly requires otherwise:

344 (a) "Noneconomic Damages" means subjective,  
345 nonpecuniary damages arising from death, pain, suffering,  
346 inconvenience, physical impairment, disfigurement, mental anguish,  
347 worry, emotional distress, loss of society and companionship, loss  
348 of consortium, bystander injury, injury to reputation,  
349 humiliation, loss of the enjoyment of life, hedonic damages, other  
350 nonpecuniary damages, and any other theory of damages such as fear  
351 of loss, illness, or injury.

352 (b) "Actual Economic Damages" means objectively  
353 verifiable pecuniary damages arising from medical expenses and  
354 medical care, rehabilitation services, custodial care,  
355 disabilities, loss of earnings and earning capacity, loss of  
356 income, burial costs, loss of use of property, costs of repair of  
357 replacement of property, costs of obtaining substitute domestic



358 services, loss of employment, loss of business or employment  
359 opportunities, and other objectively verifiable monetary losses.

360 (3) In any civil action, any compensatory damages award to a  
361 prevailing plaintiff is limited to:

362 (a) Compensation for actual economic damages suffered  
363 by the injured plaintiff; and

364 (b) Compensation for the noneconomic damages suffered  
365 by the injured plaintiff not to exceed the amount of Two Hundred  
366 Fifty Thousand Dollars (\$250,000.00) or the amount awarded in  
367 actual economic damages, whichever amount is greater.

368 (4) If liability is found, then the trier of fact, in  
369 addition to other appropriate findings, shall make separate  
370 findings specifying the total amount of noneconomic damages and  
371 the total amount of actual economic damages for each separate  
372 claimant in a manner that the court may apply the restrictions of  
373 this section.

374 (5) The trier of fact shall not be advised of the  
375 limitations imposed by this section.

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

378 85-5-7. (1) As used in this section "fault" means an act or  
379 omission of a person which is a proximate cause of injury or death  
380 to another person or persons, damages to property, tangible or  
381 intangible, or economic injury, including, but not limited to,  
382 negligence, malpractice, strict liability, absolute liability or  
383 failure to warn. "Fault" shall not include any tort which results  
384 from an act or omission committed with a specific wrongful intent  
385 and the damages addressed by this section do not include punitive  
386 damages.

387 \* \* \*

388 (2) \* \* \* In any civil action based on fault, the liability  
389 for damages caused by two (2) or more persons shall be several  
390 only, and not joint and several, and each defendant shall be



391 liable only for the amount of damages allocated to him in direct  
392 proportion to his percentage of fault, and a separate judgment  
393 shall be rendered against each defendant for that amount. To  
394 determine the amount of judgment to be entered against each  
395 defendant, the court, with regard to each defendant, shall  
396 multiply the total amount of damages recoverable by the plaintiff  
397 by the percentage of each defendant's fault and that amount shall  
398 be the maximum recoverable against said defendant. In assessing  
399 percentages of fault an employer and the employer's employee or a  
400 principal and the principal's agent shall be considered as one (1)  
401 defendant when the liability of such employer or principal has  
402 been caused by the wrongful or negligent act or omission of the  
403 employee or agent.

404 (3) In assessing percentages of fault, the trier of fact  
405 shall consider the fault of all persons who contributed to the  
406 alleged injury or death or damage to property, tangible or  
407 intangible, regardless of whether said person was or could have  
408 been named as a party to suit. Negligence or fault of a nonparty  
409 shall be considered even if such nonparty has settled or is immune  
410 from liability.

411 \* \* \*

412 (4) Nothing in this section shall eliminate or diminish any  
413 defenses or immunities which currently exist, except as expressly  
414 noted herein.

415 (5) Joint and several liability shall be imposed on all who  
416 consciously and deliberately pursue a common plan or design to  
417 commit a tortious act, or actively take part in it. Any person  
418 held jointly and severally liable under this section shall have a  
419 right of contribution from his fellow defendants acting in  
420 concert.

421 \* \* \*



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

425       (7) If the application of this section, or of any portion of  
426 it, to any person or circumstance is held invalid, the invalidity  
427 shall not affect the application of this section to other persons  
428 or circumstances which can be given effect without the invalid  
429 provision or application.

430       (8) This section shall apply to any civil action pending or  
431 filed on or after July 1, 2002.

432       **SECTION 7.** (1) No owner, lessee, or person in control of  
433 any property or premises shall be held liable for failing to  
434 prevent or failing to deter any act or omission committed by  
435 another person upon such property or premises that is a reckless,  
436 wanton, intentionally wrongful, illegal or criminal act.

437       (2) If the application of this act, or of any portion of it,  
438 to any person or circumstance is held invalid, the invalidity  
439 shall not affect the application of this act to other persons or  
440 circumstances which can be given effect without the invalid  
441 provision or application.

442       (3) This act shall apply to any civil action pending or  
443 filed on or after July 1, 2002.

444       **SECTION 8.** This act shall take effect and be in force from  
445 and after July 1, 2002.

