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To: Judiciary

SENATE BILL NO. 2342

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
237 damages, the trial court shall ascertain whether the award is
238 reasonable in its amount and rationally related to any harm
239 actually caused, and the purpose to punish what occurred giving
240 rise to the award and to deter its repetition by the defendant and
241 others, and then enter judgment, reduce the award, or set the
242 award aside, as 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 USC Section 301, et
313 seq., or the "Public Health Service Act," 42 USC 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 after 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.

