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To: Select Committee on Civil Justice Reform

HOUSE BILL NO. 12

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO  
 2 REVISE THE VENUE IN GENERAL CIVIL ACTIONS; TO REPEAL SECTIONS  
 3 11-11-5, 11-11-7, 11-11-11 AND 11-11-13, MISSISSIPPI CODE OF 1972,  
 4 WHICH PROVIDE VENUE IN ACTIONS AGAINST NONRESIDENTS, NONRESIDENT  
 5 MOTORISTS, RAILROADS AND INSURANCE COMPANIES; TO CREATE NEW  
 6 SECTION 11-1-64, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A  
 7 PRODUCT SELLER OTHER THAN A MANUFACTURER SHALL NOT BE LIABLE FOR A  
 8 LATENT DEFECT IF THE SELLER IS A MERE CONDUIT WHO PURCHASED THE  
 9 PRODUCT FROM A REPUTABLE MANUFACTURER; TO AMEND SECTION 11-1-63,  
 10 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION  
 11 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE THE LIMITATION OF  
 12 JOINT AND SEVERAL LIABILITY FOR DAMAGES CAUSED BY TWO OR MORE  
 13 PERSONS; TO AMEND SECTION 7 OF HOUSE BILL NO. 2, THIRD  
 14 EXTRAORDINARY SESSION 2002, TO PROVIDE LIMITATIONS ON NONECONOMIC  
 15 DAMAGES IN CIVIL ACTIONS; TO AMEND SECTION 11-1-65, MISSISSIPPI  
 16 CODE OF 1972, TO IMPOSE A LIMITATION ON PUNITIVE DAMAGES; TO LIMIT  
 17 THE LIABILITY OF THE SPONSOR OF AN EVENT IN THE CASE OF A CIVIL  
 18 ACTION ARISING OUT OF ACTIVITIES OCCURRING ON THE PREMISES OF THE  
 19 LOCATION WHERE THE EVENT IS HELD OR CONDUCTED, PROVIDED THAT THE  
 20 SPONSOR DOES NOT EXERCISE CONTROL OVER ANY ASPECT OF THE EVENT  
 21 OTHER THAN ACTING AS SPONSOR; TO DEFINE THE TERMS "SPONSOR" AND  
 22 "EVENT"; TO PROVIDE THAT THIS LIMITATION OF LIABILITY SHALL NOT  
 23 EXTEND TO WILLFUL ACTS OR GROSS NEGLIGENCE ON THE PART OF A  
 24 SPONSOR; TO AMEND SECTION 67-3-73, MISSISSIPPI CODE OF 1972, TO  
 25 PROVIDE THAT THERE IS NO LIABILITY TO A WHOLESALER OF BEER AND  
 26 LIGHT WINE FOR THE LAWFUL DISTRIBUTION TO A RETAIL PERMITTEE; TO  
 27 PROVIDE IMMUNITY FOR A PREMISES OWNER UNDER CERTAIN CIRCUMSTANCES;  
 28 TO CREATE NEW SECTION 11-7-30, MISSISSIPPI CODE OF 1972, TO  
 29 PROVIDE THAT CIVIL ACTIONS SHALL NOT BE ASSIGNED TO A JUDGE UNTIL  
 30 AT LEAST ONE DEFENDANT HAS FILED A RESPONSIVE PLEADING; TO  
 31 PROHIBIT RECOVERY OF HEDONIC DAMAGES IN CIVIL ACTIONS; TO PROVIDE  
 32 THAT PAYMENTS FROM COLLATERAL SOURCES SHALL BE REDUCED FROM AWARDS  
 33 IN CIVIL ACTIONS; TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF  
 34 1972, TO REVISE THE DEFINITIONS UNDER THE SMALL LOAN REGULATORY  
 35 LAW TO INCLUDE A DEFINITION OF THE TERM "OTHER CHARGES"; TO AMEND  
 36 SECTIONS 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO  
 37 PROVIDE THE REMEDY FOR CONTRACTING FOR AND RECEIVING UNLAWFUL  
 38 OTHER CHARGES; TO REPEAL SECTIONS 11-3-23 AND 11-3-25, MISSISSIPPI  
 39 CODE OF 1972, WHICH PROVIDE FOR THE ASSESSMENT OF A PENALTY ON  
 40 CERTAIN JUDGMENTS APPEALED TO THE SUPREME COURT; AND FOR RELATED  
 41 PURPOSES.

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

43 **SECTION 1.** Section 11-11-3, Mississippi Code of 1972, as  
 44 amended by House Bill No. 2, Third Extraordinary Session 2002, is  
 45 amended as follows:



46           11-11-3. \* \* \* Civil actions of which the circuit court has  
47 original jurisdiction shall be commenced in the county where the  
48 alleged act or omission occurred. Venue shall be proper as to  
49 each and every named plaintiff. If the venue is improper as to  
50 any plaintiff, then the claims involving that plaintiff shall be  
51 severed and transferred to a county where venue is proper as to  
52 such claims, or dismissed without prejudice if there exists no  
53 county of proper venue.

54           \* \* \*

55           **SECTION 2.** Sections 11-11-5, 11-11-7, 11-11-11 and 11-11-13,  
56 Mississippi Code of 1972, which provide venue in actions against  
57 nonresidents, nonresident motorists, railroads and insurance  
58 companies, are repealed.

59           **SECTION 3.** The following shall be codified as Section  
60 11-1-64, Mississippi Code of 1972:

61           11-1-64. (1) In any civil action alleging damages caused by  
62 a product, a product seller other than a manufacturer shall not be  
63 liable for a latent defect if the seller is a mere conduit who  
64 purchased the product from a reputable manufacturer. It is the  
65 intent of this section to insulate innocent sellers who are not  
66 actively negligent from forum-driven lawsuits.

67           (2) A product seller shall not be considered to have failed  
68 to exercise reasonable care with respect to a product, based upon  
69 an alleged failure to inspect the product, if there was no  
70 reasonable opportunity to inspect the product; or the inspection,  
71 in the exercise of reasonable care, would not have revealed that  
72 the product was defective.

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

76           **SECTION 4.** Section 11-1-63, Mississippi Code of 1972, is  
77 amended as follows:



78 11-1-63. In any action for damages caused by a product  
79 except for commercial damage to the product itself:

80 (a) Subject to the provisions of Section 11-1-64, the  
81 manufacturer or seller of the product shall not be liable if the  
82 claimant does not prove by the preponderance of the evidence that  
83 at the time the product left the control of the manufacturer or  
84 seller:

85 (i) 1. The product was defective because it  
86 deviated in a material way from the manufacturer's specifications  
87 or from otherwise identical units manufactured to the same  
88 manufacturing specifications, or

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

91 3. The product was designed in a defective  
92 manner, or

93 4. The product breached an express warranty  
94 or failed to conform to other express factual representations upon  
95 which the claimant justifiably relied in electing to use the  
96 product; and

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

99 (iii) The defective and unreasonably dangerous  
100 condition of the product proximately caused the damages for which  
101 recovery is sought.

102 (b) A product is not defective in design or formulation  
103 if the harm for which the claimant seeks to recover compensatory  
104 damages was caused by an inherent characteristic of the product  
105 which is a generic aspect of the product that cannot be eliminated  
106 without substantially compromising the product's usefulness or  
107 desirability and which is recognized by the ordinary person with  
108 the ordinary knowledge common to the community.

109 (c) (i) In any action alleging that a product is  
110 defective because it failed to contain adequate warnings or



111 instructions pursuant to paragraph (a)(i)2 of this section, the  
112 manufacturer or seller shall not be liable if the claimant does  
113 not prove by the preponderance of the evidence that at the time  
114 the product left the control of the manufacturer or seller, the  
115 manufacturer or seller knew or in light of reasonably available  
116 knowledge should have known about the danger that caused the  
117 damage for which recovery is sought and that the ordinary user or  
118 consumer would not realize its dangerous condition.

119 (ii) An adequate product warning or instruction is  
120 one that a reasonably prudent person in the same or similar  
121 circumstances would have provided with respect to the danger and  
122 that communicates sufficient information on the dangers and safe  
123 use of the product, taking into account the characteristics of,  
124 and the ordinary knowledge common to an ordinary consumer who  
125 purchases the product; or in the case of a prescription drug,  
126 medical device or other product that is intended to be used only  
127 under the supervision of a physician or other licensed  
128 professional person, taking into account the characteristics of,  
129 and the ordinary knowledge common to, a physician or other  
130 licensed professional who prescribes the drug, device or other  
131 product.

132 (d) In any action alleging that a product is defective  
133 pursuant to paragraph (a) of this section, the manufacturer or  
134 seller shall not be liable if the claimant (i) had knowledge of a  
135 condition of the product that was inconsistent with his safety;  
136 (ii) appreciated the danger in the condition; and (iii)  
137 deliberately and voluntarily chose to expose himself to the danger  
138 in such a manner to register assent on the continuance of the  
139 dangerous condition.

140 (e) In any action alleging that a product is defective  
141 pursuant to paragraph (a)(i)2 of this section, the manufacturer or  
142 seller shall not be liable if the danger posed by the product is  
143 known or is open and obvious to the user or consumer of the



144 product, or should have been known or open and obvious to the user  
145 or consumer of the product, taking into account the  
146 characteristics of, and the ordinary knowledge common to, the  
147 persons who ordinarily use or consume the product.

148 (f) In any action alleging that a product is defective  
149 because of its design pursuant to paragraph (a)(i)3 of this  
150 section, the manufacturer or product seller shall not be liable if  
151 the claimant does not prove by the preponderance of the evidence  
152 that at the time the product left the control of the manufacturer  
153 or seller:

154 (i) The manufacturer or seller knew, or in light  
155 of reasonably available knowledge or in the exercise of reasonable  
156 care should have known, about the danger that caused the damage  
157 for which recovery is sought; and

158 (ii) The product failed to function as expected  
159 and there existed a feasible design alternative that would have to  
160 a reasonable probability prevented the harm. A feasible design  
161 alternative is a design that would have to a reasonable  
162 probability prevented the harm without impairing the utility,  
163 usefulness, practicality or desirability of the product to users  
164 or consumers.

165 (g) (i) The manufacturer of a product who is found  
166 liable for a defective product pursuant to paragraph (a) shall  
167 indemnify a product seller for the costs of litigation, any  
168 reasonable expenses, reasonable attorney's fees and any damages  
169 awarded by the trier of fact unless the seller exercised  
170 substantial control over that aspect of the design, testing,  
171 manufacture, packaging or labeling of the product that caused the  
172 harm for which recovery of damages is sought; the seller altered  
173 or modified the product, and the alteration or modification was a  
174 substantial factor in causing the harm for which recovery of  
175 damages is sought; the seller had actual knowledge of the  
176 defective condition of the product at the time he supplied same;



177 or the seller made an express factual representation about the  
178 aspect of the product which caused the harm for which recovery of  
179 damages is sought.

180 (ii) Subparagraph (i) shall not apply unless the  
181 seller has given prompt notice of the suit to the manufacturer  
182 within thirty (30) days of the filing of the complaint against the  
183 seller.

184 (h) Nothing in this section shall be construed to  
185 eliminate any common law defense to an action for damages caused  
186 by a product.

187 **SECTION 5.** Section 85-5-7, Mississippi Code of 1972, as  
188 amended by House Bill No. 2, Third Extraordinary Session 2002, is  
189 amended as follows:

190 85-5-7. (1) As used in this section "fault" means an act or  
191 omission of a person which is a proximate cause of injury or death  
192 to another person or persons, damages to property, tangible or  
193 intangible, or economic injury, including, but not limited to,  
194 negligence, malpractice, strict liability, absolute liability or  
195 failure to warn. "Fault" shall not include any tort which results  
196 from an act or omission committed with a specific wrongful intent.

197 \* \* \*

198 (2) Except as may be otherwise provided in subsection (4) of  
199 this section, in any civil action based on fault, the liability  
200 for damages caused by two (2) or more persons shall be several  
201 only, and not joint and several and a joint tort-feasor shall be  
202 liable only for the amount of damages allocated to him in direct  
203 proportion to his percentage of fault. In assessing percentages  
204 of fault, an employer and the employer's employee or a principal  
205 and the principal's agent shall be considered as one (1) defendant  
206 when the liability of such employer or principal has been caused  
207 by the wrongful or negligent act or omission of the employee or  
208 agent.

209 \* \* \*



210       (3) Nothing in this section shall eliminate or diminish any  
211 defenses or immunities which currently exist, except as expressly  
212 noted herein.

213       (4) Joint and several liability shall be imposed on all who  
214 consciously and deliberately pursue a common plan or design to  
215 commit a tortious act, or actively take part in it. Any person  
216 held jointly and severally liable under this section shall have a  
217 right of contribution from his fellow defendants acting in  
218 concert.

219       (5) In actions involving joint tort-feasors, the trier of  
220 fact shall determine the percentage of fault for each joint  
221 tort-feasor, including named parties and absent tort-feasors  
222 without regard to whether the joint tort-feasor is immune from  
223 damages. Fault allocated to an immune tort-feasor or a  
224 tort-feasor whose liability is limited by law shall not be  
225 reallocated to any other tort-feasor.

226       \* \* \*

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

230       **SECTION 6.** Section 7 of House Bill No. 2, Third  
231 Extraordinary Session 2002, is amended as follows:

232       Section 7. (1) For the purposes of this section, the  
233 following words and phrases shall have the meanings ascribed  
234 herein unless the context clearly requires otherwise:

235           (a) "Noneconomic damages" means subjective,  
236 nonpecuniary damages arising from death, pain, suffering,  
237 inconvenience, mental anguish, worry, emotional distress, loss of  
238 society and companionship, loss of consortium, bystander injury,  
239 physical impairment, injury to reputation, humiliation,  
240 embarrassment, \* \* \* other nonpecuniary damages, and any other  
241 theory of damages such as fear of loss, illness or injury. The



242 term "noneconomic damages" shall not include damages for  
243 disfigurement, nor does it include punitive or exemplary damages.

244 (b) "Actual economic damages" means objectively  
245 verifiable pecuniary damages arising from medical expenses and  
246 medical care, rehabilitation services, custodial care,  
247 disabilities, loss of earnings and earning capacity, loss of  
248 income, burial costs, loss of use of property, costs of repair or  
249 replacement of property, costs of obtaining substitute domestic  
250 services, loss of employment, loss of business or employment  
251 opportunities, and other objectively verifiable monetary losses.

252 \* \* \*

253 (2) (a) In any civil action for injury if the trier of fact  
254 finds the defendant liable, \* \* \* the plaintiff shall not be  
255 awarded more than the following for noneconomic damages:

256 (i) For claims for causes of action filed on or  
257 after passage of House Bill No. \_\_\_\_\_, Third Extraordinary Session  
258 2002, but before July 1, 2011, the sum of Five Hundred Thousand  
259 Dollars (\$500,000.00);

260 (ii) For claims for causes of action filed on or  
261 after July 1, 2011, but before July 1, 2017, the sum of Seven  
262 Hundred Fifty Thousand Dollars (\$750,000.00);

263 (iii) For claims for causes of action filed on or  
264 after July 1, 2017, the sum of One Million Dollars  
265 (\$1,000,000.00).

266 \* \* \*

267 (b) The jury shall not be advised of the limitations  
268 imposed by this subsection (2) and the judge shall appropriately  
269 reduce any award of noneconomic damages that exceeds the  
270 applicable limitation.

271 \* \* \*

272 (3) Nothing in this section shall be construed to impose a  
273 limitation on damages for disfigurement or actual economic  
274 damages.





275           **SECTION 7.** Section 11-1-65, Mississippi Code of 1972, is  
276 amended as follows:

277           11-1-65. (1) In any action in which punitive damages are  
278 sought:

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

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

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

292           (d) The court shall determine whether the issue of  
293 punitive damages may be submitted to the trier of fact; and, if  
294 so, the trier of fact shall determine whether to award punitive  
295 damages and in what amount.

296           (e) In all cases involving an award of punitive  
297 damages, the fact finder, in determining the amount of punitive  
298 damages, shall consider, to the extent relevant, the following:  
299 the defendant's financial condition and net worth; the nature and  
300 reprehensibility of the defendant's wrongdoing, for example, the  
301 impact of the defendant's conduct on the plaintiff, or the  
302 relationship of the defendant to the plaintiff; the defendant's  
303 awareness of the amount of harm being caused and the defendant's  
304 motivation in causing such harm; the duration of the defendant's  
305 misconduct and whether the defendant attempted to conceal such  
306 misconduct; and any other circumstances shown by the evidence that  
307 bear on determining a proper amount of punitive damages. The



308 trier of fact shall be instructed that the primary purpose of  
309 punitive damages is to punish the wrongdoer and deter similar  
310 misconduct in the future by the defendant and others while the  
311 purpose of compensatory damages is to make the plaintiff whole.

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

317 (ii) In determining whether the award is  
318 excessive, the court shall take into consideration the following  
319 factors:

320 1. Whether there is a reasonable relationship  
321 between the punitive damage award and the harm likely to result  
322 from the defendant's conduct as well as the harm that actually  
323 occurred;

324 2. The degree of reprehensibility of the  
325 defendant's conduct, the duration of that conduct, the defendant's  
326 awareness, any concealment, and the existence and frequency of  
327 similar past conduct;

328 3. The financial condition and net worth of  
329 the defendant; and

330 4. In mitigation, the imposition of criminal  
331 sanctions on the defendant for its conduct and the existence of  
332 other civil awards against the defendant for the same conduct.

333 (2) The seller of a product other than the manufacturer  
334 shall not be liable for punitive damages unless the seller  
335 exercised substantial control over that aspect of the design,  
336 testing, manufacture, packaging or labeling of the product that  
337 caused the harm for which recovery of damages is sought; the  
338 seller altered or modified the product, and the alteration or  
339 modification was a substantial factor in causing the harm for  
340 which recovery of damages is sought; the seller had actual



341 knowledge of the defective condition of the product at the time he  
342 supplied same; or the seller made an express factual  
343 representation about the aspect of the product which caused the  
344 harm for which recovery of damages is sought.

345 (3) In all civil actions where an entitlement to punitive  
346 damages shall have been established under applicable laws, no  
347 award of punitive damages shall exceed the greater of three (3)  
348 times the amount of the total compensatory damages awarded to the  
349 plaintiff in an action of Three Million Dollars (\$3,000,000.00);  
350 however, if the defendant is an individual or a business with less  
351 than fifty (50) full-time employees, an award of punitive damages  
352 shall not exceed two (2) times the amount of the plaintiff's  
353 compensatory damages or Two Million Dollars (\$2,000,000.00) or  
354 three percent (3%) of such defendant's net worth, whichever is  
355 less, unless the finder of fact and court find by clear and  
356 convincing evidence that the defendant acted with criminal intent  
357 to cause serious physical bodily injury. This restriction shall  
358 not be disclosed to the trier of fact, but shall be applied by the  
359 court to any punitive damages verdict.

360 (4) Nothing herein shall be construed as creating a right to  
361 an award of punitive damages or to limit the duty of the court, or  
362 the appellate courts, to scrutinize all punitive damage awards,  
363 ensure that all punitive damage awards comply with applicable  
364 procedural, evidentiary and constitutional requirements, and to  
365 order remittitur where appropriate.

366 (5) Subsections (1) and (2) of Section 11-1-65 shall not  
367 apply to:

- 368 (a) Contracts;
- 369 (b) Libel and slander; or
- 370 (c) Causes of action for persons and property arising
- 371 out of asbestos.



372           **SECTION 8.** (1) For purposes of this section, the following  
373 words and phrases shall have the meanings ascribed in this section  
374 unless the context clearly indicates otherwise:

375           (a) "Sponsor" means any person, corporation or legal  
376 entity which, for charitable purposes or to promote good will in  
377 the community, (i) sells, rents, manufactures or provides  
378 products, equipment or promotional materials, or (ii) donates or  
379 contributes money or fees in order that an event may be held or  
380 conducted.

381           (b) "Event" means a concert, benefit, fund raiser,  
382 auction or other occasion at which entertainment, food and  
383 beverages are provided to persons who purchase tickets to attend  
384 the event.

385           (2) (a) Any sponsor of an event, which does not exercise  
386 control over any aspect of the event other than acting as a  
387 sponsor, shall be immune from liability for any civil action  
388 arising out of activities occurring on the premises of the  
389 location where the event is held or conducted.

390           (b) No sponsor shall be liable to a person who may  
391 lawfully consume any intoxicating beverage for any injury suffered  
392 by such person, or by any other person, off the premises of the  
393 event, including wrongful death and property damage, because of  
394 the intoxication of the person to whom the intoxicating beverages  
395 were served or furnished when on the premises of the event.

396           (c) This section shall not extend immunity to willful  
397 acts or gross negligence on the part of a sponsor; however, the  
398 sponsor shall not be considered to be a part of a joint venture or  
399 the principal of an agent, with regard to any other person,  
400 corporation or legal entity which is participating in the event in  
401 any capacity other than that of sponsor.

402           **SECTION 9.** Section 67-3-73, Mississippi Code of 1972, is  
403 amended as follows:



404           67-3-73. (1) The Mississippi Legislature finds and declares  
405 that the consumption of intoxicating beverages, rather than the  
406 sale or serving or furnishing of such beverages, is the proximate  
407 cause of any injury, including death and property damage,  
408 inflicted by an intoxicated person upon himself or upon another  
409 person.

410           (2) Notwithstanding any other law to the contrary, no holder  
411 of an alcoholic beverage, beer or light wine permit, or any agent  
412 or employee of such holder, who lawfully sells or serves  
413 intoxicating beverages to a person who may lawfully purchase such  
414 intoxicating beverages, shall be liable to such person or to any  
415 other person or to the estate, or survivors of either, for any  
416 injury suffered off the licensed premises, including wrongful  
417 death and property damage, because of the intoxication of the  
418 person to whom the intoxicating beverages were sold or served.

419           (3) Notwithstanding any other law to the contrary, no social  
420 host who serves or furnishes any intoxicating beverage to a person  
421 who may lawfully consume such intoxicating beverage shall be  
422 liable to such person or to any other person or to the estate, or  
423 survivors of either, for any injury suffered off such social  
424 host's premises, including wrongful death and property damage,  
425 because of the intoxication of the person to whom the intoxicating  
426 beverages were served or furnished. No social host who owns,  
427 leases or otherwise lawfully occupies a premises on which, in his  
428 absence and without his consent, intoxicating beverages are  
429 consumed by a person who may lawfully consume such intoxicating  
430 beverage shall be liable to such person or to any other person or  
431 to the estate, or survivors of either, for any injury suffered off  
432 the premises, including wrongful death and property damage,  
433 because of the intoxication of the person who consumed the  
434 intoxicating beverages.

435           (4) The limitation of liability provided by this section  
436 shall not apply to any person who causes or contributes to the



437 consumption of alcoholic beverages by force or by falsely  
438 representing that a beverage contains no alcohol, or to any holder  
439 of an alcoholic beverage, beer or light wine permit, or any agent  
440 or employee of such holder when it is shown that the person making  
441 a purchase of an alcoholic beverage was at the time of such  
442 purchase visibly intoxicated.

443 (5) There is no liability on a licensed wholesaler of beer  
444 and light wine beverages for the lawful distribution of beer  
445 and/or light wine to a retail permit holder.

446 **SECTION 10.** No owner, lessee or person in control of any  
447 property or premises shall be held liable for failing to prevent  
448 or failing to deter any act or omission committed by another  
449 person upon such property or premises that is a reckless, wanton,  
450 intentionally wrongful, illegal or criminal act.

451 **SECTION 11.** The following shall be codified as Section  
452 11-7-30, Mississippi Code of 1972:

453 11-7-30. Civil actions in circuit, chancery and county court  
454 shall not be assigned to a judge until at least one (1) defendant  
455 has filed a responsive pleading. However, any necessary  
456 preliminary matters may be decided by a judge on a separate  
457 rotating basis before assignment of the action to a particular  
458 judge.

459 **SECTION 12.** There shall be no recovery for hedonic damages  
460 in any civil actions. For purposes of this section, hedonic  
461 damages means damages for the enjoyment of life of the deceased,  
462 as measured separately from the economic productive value that an  
463 injured or deceased person would have had.

464 **SECTION 13.** On motion by a defendant or upon its own motion,  
465 the court shall hear evidence of any amount of such damages  
466 incurred prior to the judgment which the defendant or defendants  
467 claim was replaced, compensated or indemnified pursuant to the  
468 United States Social Security Act, any state or federal  
469 income-disability act, any health, sickness or income-disability



470 insurance, any accident insurance that provides health benefits or  
471 income-disability coverage, any contract or agreement of any  
472 group, organization, partnership, or corporation to provide, pay  
473 for or reimburse the cost of medical, hospital, dental or other  
474 health care services, any contract or agreement to continue to  
475 pay, in whole or in part, the plaintiff's wages or income, or any  
476 other collateral source of benefits whatsoever. If the defendant  
477 elects to introduce such evidence, the plaintiff may introduce  
478 evidence of any amount the plaintiff himself paid or contributed  
479 to secure his right to the benefits concerning which the defendant  
480 has introduced evidence. The plaintiff may also introduce  
481 evidence of any leave time lost due to the personal injury. The  
482 presiding judge shall reduce the jury award by the amount of such  
483 benefits less any amount which the plaintiff has paid or  
484 contributed to secure such benefits. There shall be no reduction  
485 for collateral sources for which a subrogation or reimbursement  
486 right exists. Such reduction shall be offset to the extent of any  
487 amount which has been paid, contributed, or forfeited by, or on  
488 behalf of, the claimant or members of the claimant's immediate  
489 family to secure her or his right to any collateral source benefit  
490 which the claimant is receiving as a result of her or his injury.

491 **SECTION 14.** Section 75-67-103, Mississippi Code of 1972, is  
492 amended as follows:

493 75-67-103. The following words and phrases, when used in  
494 this article, shall, for the purposes of this article, have the  
495 meanings respectively ascribed to them in this section, except  
496 where the context clearly describes and indicates a different  
497 meaning:

498 (a) "Person" means and includes every natural person,  
499 firm, corporation, copartnership, joint-stock or other association  
500 or organization, and any other legal entity whatsoever.

501 (b) "Licensee" means and includes every person holding  
502 a valid license issued under the provisions of the Small Loan



503 Privilege Tax Law [Sections 75-67-201 through 75-67-243] of this  
504 state, except those specifically exempt by the provisions of this  
505 article, who, in addition to any other rights and powers he or it  
506 might otherwise possess, shall engage in the business of lending  
507 money either directly or indirectly, to be paid back in monthly  
508 installments or other regular installments for periods of more or  
509 less than one (1) month, and whether or not the lender requires  
510 security from the borrower as indemnity for the repayment of the  
511 loan.

512 (c) "Occasional lender" means a person making not more  
513 than one (1) loan in any month or not more than twelve (12) loans  
514 in any twelve-month period.

515 (d) "Commissioner" means the Commissioner of Banking  
516 and Consumer Finance of the State of Mississippi.

517 (e) "Department" means the Department of Banking and  
518 Consumer Finance of the State of Mississippi.

519 (f) "Records" or "documents" means any item in hard  
520 copy or produced in a format of storage commonly described as  
521 electronic, imaged, magnetic, microphotographic or otherwise, and  
522 any reproduction so made shall have the same force and effect as  
523 the original thereof and be admitted in evidence equally with the  
524 original.

525 (g) "Other charges" means any amounts contracted for or  
526 received by any licensee or other person in connection with a  
527 loan, other than finance charges as defined in Section 75-17-25.

528 **SECTION 15.** Section 75-67-119, Mississippi Code of 1972, is  
529 amended as follows:

530 75-67-119. (1) If any finance charge in excess of that  
531 expressly permitted by Section 75-17-21 is contracted for or  
532 received, all finance charges and other charges shall be forfeited  
533 and may be recovered, whether the contract be executed or  
534 executory. If any finance charge is contracted for or received  
535 that exceeds the maximum finance charge authorized by law by more





536 than one hundred percent (100%), the principal and all finance  
537 charges and other charges shall be forfeited and any amount paid  
538 may be recovered by suit; and, in addition, the licensee and the  
539 several members, officers, directors, agents, and employees  
540 thereof who shall have participated in such violation shall be  
541 guilty of a misdemeanor and, upon conviction thereof, shall be  
542 punished by a fine of not more than One Thousand Dollars  
543 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in  
544 the discretion of the court; and, further, the Commissioner of  
545 Banking and Consumer Finance shall forthwith cite such licensee to  
546 show cause why its license should not be revoked and proceedings  
547 thereon shall be as is specifically provided in the Small Loan  
548 Privilege Tax Law (Sections 75-67-201 through 75-67-243).

549 (2) If any licensee or other person violates any provision  
550 of this article or any rule or regulation promulgated pursuant to  
551 this article or any provision of Title 75, Chapter 17, of the  
552 Mississippi Code of 1972, or contracts for or receives, or  
553 participates in contracting for or receiving, other charges by  
554 false, misleading, deceptive or fraudulent means, or in violation  
555 of any applicable statutory or common law duty, or which are  
556 otherwise unlawful, all such unlawful other charges shall be  
557 forfeited and may be recovered, whether the contract be executed  
558 or executory. If the other charges subject to forfeiture under  
559 this section exceed Five Hundred Dollars (\$500.00), all finance  
560 charges shall additionally be forfeited and may be recovered. If  
561 the other charges subject to forfeiture under this section exceed  
562 One Thousand Five Hundred Dollars (\$1,500.00), all principal shall  
563 additionally be forfeited and may be recovered.

564 (3) Except as provided in subsection (4) of this section,  
565 the remedies and penalties provided in this section shall be the  
566 exclusive remedies and penalties for all claims against a licensee  
567 or any other person for contracting for or receiving any finance  
568 charge in excess of that expressly permitted by Section 75-17-21,



569 or for violation of any provision of this article or any rule or  
570 regulation promulgated pursuant to this article or any provision  
571 of Title 75, Chapter 17, of the Mississippi Code of 1972, or for  
572 contracting for or receiving, or participating in contracting for  
573 or receiving, other charges by false, misleading, deceptive or  
574 fraudulent means, or in violation of any applicable statutory or  
575 common law duty, or which are otherwise unlawful.

576 (4) The remedies and penalties provided in this section are  
577 supplemental to the defense provided in Section 75-67-127(3) and  
578 to the enforcement powers conferred upon the Commissioner of  
579 Banking and Consumer Finance.

580 **SECTION 16.** Section 75-17-25, Mississippi Code of 1972, is  
581 amended as follows:

582 75-17-25. (1) The term "finance charge" as used in this  
583 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,  
584 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,  
585 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or  
586 payable, directly or indirectly, by a debtor for receiving a loan  
587 or incident to or as a condition of the extension of credit,  
588 including, but not limited to, interest, brokerage fees, finance  
589 charges, loan fees, discount, points, service charges, transaction  
590 charges, activity charges, carrying charges, time price  
591 differential, finders fees or any other cost or expense to the  
592 debtor for services rendered or to be rendered to the debtor in  
593 making, arranging or negotiating a loan of money or an extension  
594 of credit and for the accounting, guaranteeing, endorsing,  
595 collecting and other actual services rendered by the lender;  
596 provided, however, that recording fees, motor vehicle title fees,  
597 attorney's fees, insurance premiums, fees permitted to be charged  
598 under the provisions of Section 79-7-7, service charges as  
599 provided in Section 81-19-31, and with respect to a debt secured  
600 by an interest in land, bona fide closing costs and appraisal fees



601 incidental to the transaction shall not be included in the finance  
602 charge.

603       (2) Subject to the other provisions of this section,  
604 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,  
605 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,  
606 75-67-127 and 75-67-217, the finance charge may be calculated on  
607 the assumption that the indebtedness will be discharged as it  
608 becomes due, and prepayment penalties and statutory default  
609 charges shall not be included in the finance charge. Nothing in  
610 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,  
611 75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner  
612 of contracting for such finance charge, whether by way of add-on,  
613 discount or otherwise, so long as the annual percentage rate does  
614 not exceed that permitted by law. If a greater finance charge  
615 than that authorized by applicable law shall be stipulated for or  
616 received in any case, all interest and finance charge shall be  
617 forfeited, and may be recovered back, whether the contract be  
618 executed or executory. If a finance charge be contracted for or  
619 received that exceeds the maximum authorized by law by more than  
620 one hundred percent (100%), the principal and all finance charges  
621 shall be forfeited and any amount paid may be recovered by suit.  
622 The provisions of this section, Section 75-17-1 and Sections  
623 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33  
624 shall not restrict the extension of credit pursuant to any other  
625 applicable law. A licensee under the Small Loan Regulatory Law  
626 (Sections 75-67-101 through 75-67-135), and the Small Loan  
627 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may  
628 contract for and receive finance charges as authorized by Section  
629 75-17-21, and the late payment charge as authorized by Section  
630 75-17-27, regardless of the purpose for which the loan or other  
631 extension of credit is made.

632       (3) If in connection with a consumer loan any person  
633 contracts for or receives, or participates in contracting for or



634 receiving, other charges by false, misleading, deceptive or  
635 fraudulent means, or in violation of any applicable statutory or  
636 common law duty, or which are otherwise unlawful, all such  
637 unlawful other charges shall be forfeited and may be recovered,  
638 whether the contract be executed or executory. If the other  
639 charges subject to forfeiture under this section exceed Five  
640 Hundred Dollars (\$500.00), all finance charges shall additionally  
641 be forfeited and may be recovered. If the other charges subject  
642 to forfeiture under this section exceed One Thousand Five Hundred  
643 Dollars (\$1,500.00), all principal shall additionally be forfeited  
644 and may be recovered.

645 The remedies and penalties provided in this section shall be  
646 the exclusive remedies and penalties for contracting for or  
647 receiving any finance charge in excess of that permitted by  
648 applicable law or for contracting for or receiving, or  
649 participating in contracting for or receiving, other charges by  
650 false, misleading, deceptive or fraudulent means, or in violation  
651 of any applicable statutory or common law duty, or which are  
652 otherwise unlawful.

653 As used in this subsection (3), the term "consumer loan"  
654 shall mean any loan or extension of credit offered or extended  
655 primarily for personal, family or household purposes; and the term  
656 "other charges" shall mean any amounts contracted for or received  
657 by any person in connection with a consumer loan, other than  
658 finance charges as defined in this section.

659 **SECTION 17.** Sections 11-3-23 and 11-3-25, Mississippi Code  
660 of 1972, which provide for the assessment of a penalty on the  
661 appeal of certain judgments to the Supreme Court, are repealed.

662 **SECTION 18.** This act shall take effect and be in force from  
663 and after its passage, and shall apply to all causes of action  
664 pending on or filed after that date.

