

By: Representative Eads

To: Select Committee on
Civil Justice Reform

HOUSE BILL NO. 17

1 AN ACT TO AMEND SECTIONS 11-11-3, 11-11-5, 11-11-7, 11-11-11
2 AND 11-11-13, MISSISSIPPI CODE OF 1972, TO REVISE VENUE IN CIVIL
3 ACTIONS; TO AMEND SECTION 11-1-62, MISSISSIPPI CODE OF 1972, TO
4 PROVIDE PROTECTION FOR PHARMACISTS AND LICENSED PHARMACIES IN DRUG
5 SUITS; TO AMEND SECTION 11-1-63, MISSISSIPPI CODE OF 1972, TO
6 CONFORM TO THE PROVISIONS OF THIS ACT; TO PROVIDE IMMUNITY FOR
7 PROPERTY OWNERS IN PREMISES LIABILITY ACTIONS; TO REQUIRE THAT
8 CERTAIN ACTIONS FOR DAMAGES AND OTHER RELIEF AGAINST FIREARMS OR
9 AMMUNITION MANUFACTURERS, DISTRIBUTORS OR SELLERS THEREOF MAY ONLY
10 BE BROUGHT BY THE STATE OR ITS POLITICAL SUBDIVISIONS; TO PROVIDE
11 AN ASSESSMENT FOR FILING FRIVOLOUS CLAIMS; TO PROHIBIT ATTORNEY
12 ADVERTISING BY ATTORNEYS NOT ADMITTED TO PRACTICE IN MISSISSIPPI;
13 TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE JOINT
14 AND SEVERAL LIABILITY IN CERTAIN CIVIL ACTIONS; TO PROVIDE THAT
15 CERTAIN INFORMATION REGARDING A DEFECTIVE PRODUCT, FINANCIAL
16 FRAUD, UNFAIR INSURANCE CLAIMS PRACTICES OR ENVIRONMENTAL HAZARD
17 SHALL BE PRESUMED TO BE PUBLIC INFORMATION; TO ALLOW SUCH
18 INFORMATION TO BE KEPT CONFIDENTIAL BY COURT ORDER; TO DEFINE
19 CERTAIN TERMS; TO AMEND SECTIONS 75-26-5, 75-26-11 AND 75-26-15,
20 MISSISSIPPI CODE OF 1972, TO CONFORM TO SUCH PROVISION THAT SUCH
21 INFORMATION IS PRESUMED TO BE PUBLIC; TO LIMIT THE LIABILITY OF
22 THE SPONSOR OR ADVERTISER OF AN EVENT IN THE CASE OF A CIVIL
23 ACTION ARISING OUT OF ACTIVITIES OCCURRING ON THE PREMISES OF THE
24 LOCATION WHERE THE EVENT IS HELD OR CONDUCTED, PROVIDED THAT THE
25 SPONSOR OR ADVERTISER DOES NOT EXERCISE CONTROL OVER ANY ASPECT OF
26 THE EVENT OTHER THAN ACTING AS SPONSOR OR ADVERTISER; TO DEFINE
27 THE TERMS "SPONSOR" AND "EVENT"; TO PROVIDE THAT THIS LIMITATION
28 OF LIABILITY SHALL NOT EXTEND TO WILLFUL ACTS OR GROSS NEGLIGENCE
29 ON THE PART OF A SPONSOR; TO CREATE NEW SECTION 11-7-30,
30 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CIVIL ACTIONS IN CIRCUIT
31 COURT SHALL NOT BE ASSIGNED TO A JUDGE UNTIL AT LEAST ONE
32 DEFENDANT HAS FILED A RESPONSIVE PLEADING; TO AMEND SECTION
33 11-1-65, MISSISSIPPI CODE OF 1972, TO IMPOSE A LIMITATION ON
34 PUNITIVE DAMAGES AGAINST A BUSINESS; TO PROVIDE THAT THE
35 LIMITATION SHALL NOT APPLY IN CERTAIN CASES; TO AMEND SECTION
36 75-67-103, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS UNDER
37 THE SMALL LOAN REGULATORY LAW TO INCLUDE DEFINITIONS FOR THE TERMS
38 "OTHER CHARGES," "CONSUMER LOAN," AND "CONSUMER"; TO AMEND
39 SECTIONS 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO
40 PROVIDE FOR REMEDIES, PENALTIES AND DAMAGES FOR CONTRACTING FOR
41 AND RECEIVING UNLAWFUL OTHER CHARGES IN CONNECTION WITH CONSUMER
42 LOANS; TO PROVIDE FOR DOUBLE PENALTY AMOUNTS IF OTHER CHARGES ARE
43 CONTRACTED FOR OR RECEIVED BY ACTUAL FRAUD; TO PROVIDE FOR THE
44 RECOVERY OF ATTORNEY'S FEES IF PENALTIES ARE RECOVERED; TO PROVIDE
45 THAT THE REMEDIES, PENALTIES AND DAMAGES PROVIDED FOR UNDER THIS
46 ACT ARE EXCLUSIVE; TO PROVIDE FOR A ONE-YEAR STATUTE OF
47 LIMITATIONS ON FILING ACTIONS FOR RECOVERY OF PENALTIES OR DAMAGES
48 UNDER THIS ACT; TO PROVIDE THAT THE PROVISIONS OF THIS ACT SHALL
49 STAND REPEALED ON JULY 1, 2004; AND FOR RELATED PURPOSES.

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



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

54 11-11-3. (1) Civil actions of which the circuit court has
55 original jurisdiction shall be commenced in the county in which
56 the defendant resides or in the county where the cause of action
57 may occur or accrue and, if the defendant is a domestic
58 corporation, in the county in which said corporation is domiciled
59 or in the county where the cause of action may occur or accrue,
60 except where otherwise provided, and except actions of trespass on
61 land, ejectment and actions for the statutory penalty for cutting
62 and boxing trees and firing woods and actions for the actual value
63 of trees cut which shall be brought in the county where the land
64 or some part thereof is situated.

65 (2) Any action against a licensed physician, osteopath,
66 dentist, nurse, nurse practitioner, physician assistant,
67 psychologist, pharmacist, podiatrist, optometrist, chiropractor,
68 institution for the aged or infirm, hospital or licensed pharmacy,
69 including any legal entity which may be liable for their acts or
70 omissions, for malpractice, negligence, error, omission, mistake,
71 breach of standard of care or the unauthorized rendering of
72 professional services shall be brought in the county in which the
73 alleged act or omission occurred.

74 (3) Any cause of action arising from another state which has
75 no legal nexus to the State of Mississippi may not be brought in a
76 state court.

77 (4) If a civil action is brought in an improper county, such
78 action may be transferred to the proper county pursuant to Section
79 11-11-17.

80 **SECTION 2.** Section 11-11-5, Mississippi Code of 1972, is
81 amended as follows:

82 11-11-5. Actions against any railroad, express, steamboat,
83 power, superpower, telegraph or telephone corporation, or against



84 individuals owning, managing, operating or controlling a railroad,
85 express line or route, steamboat, power, superpower, telephone or
86 telegraph line, or against any corporation or individuals owning,
87 managing, operating or controlling a motor transportation line for
88 the conveyance of passengers, freight or express, for hire, over
89 the highways in the State of Mississippi, may be brought in the
90 county where the cause of action accrued or in the county where
91 the defendant has its principal place of business * * * at the
92 time that the cause of action accrued.

93 **SECTION 3.** Section 11-11-7, Mississippi Code of 1972, is
94 amended as follows:

95 11-11-7. Actions against insurance companies, groups of
96 insurance companies or an insurance association may be brought in
97 any county in which a loss may occur, or, if on a life policy, in
98 the county in which the beneficiary resides, and process may be
99 sent to any county, to be served as directed by law. Such actions
100 may also be brought in the county where the principal place of
101 business of such corporation or company may be. In case of a
102 foreign corporation or company, such actions may be brought in the
103 county where service of process may be had on an agent of such
104 corporation or company or service of process in any suit or
105 action, or any other legal process, may be served upon the
106 Insurance Commissioner of the State of Mississippi, and such
107 notice will confer jurisdiction on any court in any county in the
108 state where the suit is filed, provided the suit is brought in the
109 county where the loss occurred * * *.

110 **SECTION 4.** Section 11-11-11, Mississippi Code of 1972, is
111 amended as follows:

112 11-11-11. Any civil action for the recovery of damages
113 brought against a nonresident or the representative of the
114 nonresident in the State of Mississippi may be commenced in the
115 county in which the action accrued * * *, except as otherwise
116 provided by law.



117 **SECTION 5.** Section 11-11-13, Mississippi Code of 1972, is
118 amended as follows:

119 11-11-13. The venue of an action for damages brought against
120 a nonresident arising from his operation, either in person or by
121 agent or employee, of a motor vehicle upon any public street,
122 road, or highway of this state, or elsewhere in this state, shall
123 be * * * in the county where the cause of action accrued or where
124 the plaintiff resides.

125 **SECTION 6.** Section 11-1-62, Mississippi Code of 1972, as
126 codified in House Bill No. 2, Third Extraordinary Session 2002, is
127 amended as follows:

128 11-1-62. In any civil action alleging damages caused by a
129 prescription drug that has been approved by the federal Food and
130 Drug Administration, a physician, optometrist, pharmacist,
131 licensed pharmacy, nurse practitioner or physician assistant may
132 not be sued unless the plaintiff pleads specific facts which, if
133 proven, amount to negligence on the part of the medical provider.
134 It is the intent of this section to immunize innocent medical
135 providers listed in this section who are not actively negligent
136 from forum-driven lawsuits.

137 **SECTION 7.** Section 11-1-63, Mississippi Code of 1972, is
138 amended as follows:

139 11-1-63. Notwithstanding the provisions of Section 11-1-62,
140 in any action for damages caused by a product except for
141 commercial damage to the product itself:

142 (a) The manufacturer, or seller, dispenser or
143 prescriber of the product shall not be liable if the claimant does
144 not prove by the preponderance of the evidence that at the time
145 the product left the control of the manufacturer, or seller,
146 dispenser or prescriber:

147 (i) 1. The product was defective because it
148 deviated in a material way from the manufacturer's specifications



149 or from otherwise identical units manufactured to the same
150 manufacturing specifications, or

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

153 3. The product was designed in a defective
154 manner, or

155 4. The product breached an express warranty
156 or failed to conform to other express factual representations upon
157 which the claimant justifiably relied in electing to use the
158 product; and

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

161 (iii) The defective and unreasonably dangerous
162 condition of the product proximately caused the damages for which
163 recovery is sought.

164 (b) A product is not defective in design or formulation
165 if the harm for which the claimant seeks to recover compensatory
166 damages was caused by an inherent characteristic of the product
167 which is a generic aspect of the product that cannot be eliminated
168 without substantially compromising the product's usefulness or
169 desirability and which is recognized by the ordinary person with
170 the ordinary knowledge common to the community.

171 (c) (i) In any action alleging that a product is
172 defective because it failed to contain adequate warnings or
173 instructions pursuant to paragraph (a)(i)2 of this section, the
174 manufacturer, or seller, dispenser or prescriber shall not be
175 liable if the claimant does not prove by the preponderance of the
176 evidence that at the time the product left the control of the
177 manufacturer, seller, dispenser or prescriber, the manufacturer or
178 seller, dispenser or prescriber knew or in light of reasonably
179 available knowledge should have known about the danger that caused
180 the damage for which recovery is sought and that the ordinary user
181 or consumer would not realize its dangerous condition.



182 (ii) An adequate product warning or instruction is
183 one that a reasonably prudent person in the same or similar
184 circumstances would have provided with respect to the danger and
185 that communicates sufficient information on the dangers and safe
186 use of the product, taking into account the characteristics of,
187 and the ordinary knowledge common to an ordinary consumer who
188 purchases the product; or in the case of a prescription drug,
189 medical device or other product that is intended to be used only
190 under the supervision of a physician or other licensed
191 professional person, taking into account the characteristics of,
192 and the ordinary knowledge common to, a physician or other
193 licensed professional who prescribes the drug, device or other
194 product.

195 (d) For purposes of this section:

196 (i) "Seller" means any person or entity that sells
197 products of any kind.

198 (ii) "Prescriber" means any person licensed by the
199 State of Mississippi to prescribe medicine.

200 (iii) "Dispenser" means any person or entity
201 licensed as a pharmacist or pharmacy.

202 (e) In any action alleging that a product is defective
203 pursuant to paragraph (a) of this section, the manufacturer,
204 seller, dispenser or prescriber shall not be liable if the
205 claimant (i) had knowledge of a condition of the product that was
206 inconsistent with his safety; (ii) appreciated the danger in the
207 condition; and (iii) deliberately and voluntarily chose to expose
208 himself to the danger in such a manner to register assent on the
209 continuance of the dangerous condition.

210 (f) In any action alleging that a product is defective
211 pursuant to paragraph (a)(i)2 of this section, the manufacturer,
212 seller, dispenser or prescriber shall not be liable if the danger
213 posed by the product is known or is open and obvious to the user
214 or consumer of the product, or should have been known or open and



215 obvious to the user or consumer of the product, taking into
216 account the characteristics of, and the ordinary knowledge common
217 to, the persons who ordinarily use or consume the product.

218 (g) In any action alleging that a product is defective
219 because of its design pursuant to paragraph (a)(i)3 of this
220 section, the manufacturer or product seller shall not be liable if
221 the claimant does not prove by the preponderance of the evidence
222 that at the time the product left the control of the manufacturer
223 or seller:

224 (i) The manufacturer, seller, dispenser or
225 prescriber knew, or in light of reasonably available knowledge or
226 in the exercise of reasonable care should have known, about the
227 danger that caused the damage for which recovery is sought; and

228 (ii) The product failed to function as expected
229 and there existed a feasible design alternative that would have to
230 a reasonable probability prevented the harm. A feasible design
231 alternative is a design that would have to a reasonable
232 probability prevented the harm without impairing the utility,
233 usefulness, practicality or desirability of the product to users
234 or consumers.

235 (h) (i) The manufacturer of a product who is found
236 liable for a defective product pursuant to paragraph (a) shall
237 indemnify a product seller, dispenser or prescriber for the costs
238 of litigation, any reasonable expenses, reasonable attorney's fees
239 and any damages awarded by the trier of fact unless the seller,
240 dispenser or prescriber exercised substantial control over that
241 aspect of the design, testing, manufacture, packaging or labeling
242 of the product that caused the harm for which recovery of damages
243 is sought; the seller, dispenser or prescriber altered or modified
244 the product, and the alteration or modification was a substantial
245 factor in causing the harm for which recovery of damages is
246 sought; the seller, dispenser or prescriber had actual knowledge
247 of the defective condition of the product at the time he supplied



248 same; or the seller, dispenser or prescriber made an express
249 factual representation about the aspect of the product which
250 caused the harm for which recovery of damages is sought.

251 (ii) Subparagraph (i) shall not apply unless the
252 seller has given prompt notice of the suit to the manufacturer
253 within ninety (90) days of the service of the complaint against
254 the seller. The provision of this subparagraph shall not conflict
255 with the Mississippi Rules of Civil Procedure.

256 (i) With respect to manufacturers of drugs or medical
257 devices, an agent or employee of such manufacturer who directly
258 participates in or authorizes the commission of a tort, shall be
259 subject to liability for any individual act of negligence
260 committed by said agent or employee related to said drugs or
261 medical devices within the course and scope of employment.

262 (j) It is the intent of this section to immunize
263 innocent medical providers including pharmacists and licensed
264 pharmacies who are not actively negligent from forum-driven
265 lawsuits.

266 (k) Nothing in this section shall be construed to
267 eliminate any common law defense to an action for damages caused
268 by a product.

269 **SECTION 8.** (1) The authority to bring an action against any
270 firearms or ammunition manufacturer, distributor or dealer duly
271 licensed under federal law on behalf of any governmental entity
272 created by or pursuant to an act of the Mississippi Legislature or
273 the Mississippi Constitution of 1890, or any department, agency or
274 authority thereof, for damages, abatement, injunctive relief or
275 any other relief or remedy resulting from or relating to the
276 lawful design, manufacture, distribution or sale of firearms,
277 firearm components, silencers, ammunition or ammunition components
278 to the public, shall be exclusively reserved to the state. This
279 section shall not prohibit a political subdivision from bringing
280 an action against a firearm or ammunition manufacturer,



281 distributor or dealer for breach of contract or warranty as to
282 firearms or ammunition purchased by the political subdivision, or
283 for injuries resulting from a firearm malfunction due to defects
284 in materials or workmanship.

285 (2) This section shall apply to any action brought on or
286 after passage of this act.

287 (3) "Political subdivision" and "governmental entity" shall
288 have the meanings ascribed in Section 11-46-1.

289 **SECTION 9.** No owner, occupant, lessee or managing agent of
290 property shall be civilly liable for the criminal acts of a third
291 party, unless such owner, occupant, lessee or managing agent knew
292 or, with the exercise of reasonable diligence, should have known
293 of the risk of criminal conduct on or around such property and the
294 failure to take reasonable measures to deter such foreseeable
295 conduct is a proximate cause of damages to an individual or
296 entity.

297 **SECTION 10.** If a party files any pleading in a civil action,
298 which in the opinion of the court is frivolous, the court may
299 impose an assessment of not more than One Thousand Dollars
300 (\$1,000.00) against each attorney of record for the party filing
301 the pleading. Such assessment shall be in addition to any other
302 assessments, penalties or sanctions authorized by law or
303 otherwise. The proceeds of any assessment imposed under this
304 section shall be paid to the Mississippi Volunteer Lawyers
305 Project, Inc.

306 **SECTION 11.** The Legislature recognizes that attorneys should
307 be licensed by the Mississippi Bar before engaging in any
308 solicitation of clients in this state. Such licensing of
309 attorneys protects the people of Mississippi in that the
310 Mississippi Bar has direct jurisdiction over attorneys licensed by
311 it. The Bar can act against such licensed attorneys in the event
312 that such licensed attorneys commit violations of Mississippi law,
313 court rules and rules of ethics for attorneys. The Legislature



314 finds that this section is necessary for the protection of the
315 people of Mississippi. An attorney who is not admitted to the
316 Mississippi Bar shall not advertise his legal services in this
317 state for the purpose of soliciting prospective clients for the
318 commencing of any civil action in this state, or for the purpose
319 of soliciting clients for any civil action already commenced or
320 pending in this state, unless the attorney who is not a member of
321 the Mississippi Bar has associated an attorney who (a) is a member
322 of the Mississippi Bar; and (b) will be associated and actively
323 working on substantial aspects in any civil action filed on behalf
324 of a client solicited as a result of the advertisement. A law
325 firm composed of both attorneys who are members of the Mississippi
326 Bar and attorneys who are not members of the Mississippi Bar may
327 advertise in this state if a majority of the members of the firm
328 are members of the Mississippi Bar. For purposes of this section,
329 a listing in the residential or business section of the white
330 pages of a telephone book shall not be an advertisement.

331 **SECTION 12.** Section 85-5-7, Mississippi Code of 1972, as
332 amended by House Bill No. 2, Third Extraordinary Session 2002, is
333 amended as follows:

334 85-5-7. (1) As used in this section "fault" means an act or
335 omission of a person which is a proximate cause of injury or death
336 to another person or persons, damages to property, tangible or
337 intangible, or economic injury, including, but not limited to,
338 negligence, malpractice, strict liability, absolute liability or
339 failure to warn. "Fault" shall not include any tort which results
340 from an act or omission committed with a specific wrongful intent.

341 (2) Except as may be otherwise provided in subsections (6)
342 and (8) of this section, in any civil action based on fault, the
343 liability for damages caused by two (2) or more persons shall be
344 joint and several only to the extent necessary for the person
345 suffering injury, death or loss to recover fifty percent (50%) of
346 his recoverable damages.



347 (3) Except as otherwise provided in subsections (2), (6) and
348 (8) of this section, in any civil action based on fault, the
349 liability for damages caused by two (2) or more persons shall be
350 several only, and not joint and several and a joint tort-feasor
351 shall be liable only for the amount of damages allocated to him in
352 direct proportion to his percentage of fault. In assessing
353 percentages of fault an employer and the employer's employee or a
354 principal and the principal's agent shall be considered as one (1)
355 defendant when the liability of such employer or principal has
356 been caused by the wrongful or negligent act or omission of the
357 employee or agent.

358 (4) Any defendant held jointly liable under this section
359 shall have a right of contribution against fellow joint
360 tort-feasors. A defendant shall be held responsible for
361 contribution to other joint tort-feasors only for the percentage
362 of fault assessed to such defendant.

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

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

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

375 (8) Except as provided in subsection (6) of this section, in
376 any action involving joint tort-feasors, the trier of fact shall
377 determine the percentage of fault for each joint tort-feasor,
378 including named parties and absent tort-feasors, without regard to
379 whether the joint tort-feasor is immune from damages. For



380 noneconomic damages, a defendant's liability shall be several
381 only. For economic damages, for any defendant whose fault is
382 determined to be less than thirty percent (30%), liability shall
383 be several only and for any defendant whose fault is determined to
384 be thirty percent (30%) or more, liability shall be joint and
385 several only to the extent necessary for the person suffering
386 injury, death or loss to recover fifty percent (50%) of his
387 recoverable damages. Fault allocated under this subsection to an
388 immune tort-feasor or a tort-feasor whose liability is limited by
389 law shall not be reallocated to any other tort-feasor.

390 (9) Nothing in this section shall be construed to create a
391 cause of action. Nothing in this section shall be construed, in
392 any way, to alter the immunity of any person.

393 Notwithstanding any other provisions of law to the contrary,
394 the doctrine of joint and several liability shall not be limited
395 as to tortious conduct which injures the health or safety of
396 Mississippi residents by manufacture or distribution of a drug or
397 defective or dangerous substance causing injury to Mississippi
398 residents or which constitutes fraud.

399 **SECTION 13.** (1) Notwithstanding any other provision of law,
400 in an action based upon injury, wrongful death, or financial loss
401 allegedly caused by a defective product, financial fraud, unfair
402 insurance claims practice or environmental hazard, other than any
403 action classified by a court as a mass tort action, information
404 concerning the defective product, financial fraud, unfair
405 insurance claims practice or environmental hazard, which is
406 contained in a settlement agreement pertaining to the action and
407 not filed with the court shall be presumed to be public
408 information and may not be kept confidential pursuant to agreement
409 of the parties. This information may be kept confidential for a
410 period that the court deems appropriate only pursuant to a court
411 order.

412 (2) As used in this section:



413 (a) "Defective product" means a product that may be
414 defective because of a defect in manufacturing or design or a
415 failure to adequately warn the consumer of a hazard involved in
416 the foreseeable use of the product, where the defect may result in
417 personal injury to one or more persons.

418 (b) "Financial fraud" means any fraudulent insurance
419 practice or any fraudulent plan or scheme to sell a publicly
420 offered investment product without full disclosure of the risks
421 associated with the purchase of the product, where the plan or
422 scheme may cause or has caused financial loss.

423 (c) "Environmental hazard" means a release or
424 threatened release of a hazardous substance that poses a threat to
425 public health or safety involving present or future danger of
426 death, bodily injury or health disability to human beings exposed
427 to a hazardous substance release or threatened release.

428 **SECTION 14.** Section 75-26-5, Mississippi Code of 1972, is
429 amended as follows:

430 75-26-5. (1) Except as provided in Section 12 of House Bill
431 No. , Third Extraordinary Session 2002, actual or threatened
432 misappropriation may be enjoined. Upon application to the court,
433 an injunction shall be terminated when the trade secret has ceased
434 to exist, but the injunction may be continued for an additional
435 reasonable period of time in order to eliminate commercial
436 advantage that otherwise would be derived from the
437 misappropriation.

438 (2) In exceptional circumstances, an injunction may
439 condition future use upon payment of a reasonable royalty for no
440 longer than the period of time for which use could have been
441 prohibited. Exceptional circumstances include, but are not
442 limited to, a material and prejudicial change of position prior to
443 acquiring knowledge or reason to know of misappropriation that
444 renders a prohibitive injunction inequitable.



445 (3) In appropriate circumstances, affirmative acts to
446 protect a trade secret may be compelled by court order.

447 **SECTION 15.** Section 75-26-11, Mississippi Code of 1972, is
448 amended as follows:

449 75-26-11. Except as provided in Section 12 of House
450 Bill No. , Third Extraordinary Session 2002, in an action under
451 this chapter, a court shall preserve the secrecy of an alleged
452 trade secret by reasonable means, which may include granting
453 protective orders in connection with discovery proceedings,
454 holding in-camera hearings, sealing the records of the action and
455 ordering any person involved in the litigation not to disclose an
456 alleged trade secret without prior court approval.

457 **SECTION 16.** Section 75-26-15, Mississippi Code of 1972, is
458 amended as follows:

459 75-26-15. (1) Except as provided in subsection (2), this
460 chapter displaces conflicting tort, restitutionary and other law
461 of this state providing civil remedies for misappropriation of a
462 trade secret.

463 (2) This chapter does not affect:

464 (a) Contractual remedies, whether or not based upon
465 misappropriation of a trade secret;

466 (b) Other civil remedies that are not based upon
467 misappropriation of a trade secret; * * *

468 (c) Criminal remedies, whether or not based upon
469 misappropriation of a trade secret; or

470 (d) The provisions of Section 12 of House Bill No. ,
471 Third Extraordinary Session 2002.

472 **SECTION 17.** For purposes of Sections 16 and 17 of this act,
473 the following words and phrases shall have the meanings ascribed
474 in this section unless the context clearly indicates otherwise:

475 (a) "Sponsor or advertiser" means any person,
476 corporation or legal entity which, solely for charitable purposes,
477 (i) sells, rents, manufactures or provides products, equipment or



478 promotional materials, or (ii) donates or contributes money or
479 fees, in order that an event may be held or conducted.

480 (b) "Event" means a concert, benefit, fund-raiser,
481 auction or other occasion at which entertainment, food and
482 beverages are provided to persons.

483 **SECTION 18.** (1) Any sponsor or advertiser of an event,
484 which does not exercise control over any aspect of the event other
485 than acting as a sponsor or advertiser, shall be immune from
486 liability for any civil action arising out of activities occurring
487 on the premises of the location where the event is held or
488 conducted.

489 (2) No sponsor or advertiser shall be liable to a person who
490 may lawfully consume any intoxicating beverage for any injury
491 suffered by such person, or by any other person, off the premises
492 of the event, including wrongful death and property damage,
493 because of the intoxication of the person to whom the intoxicating
494 beverages were served or furnished when on the premises of the
495 event.

496 (3) This section shall not extend immunity to willful acts
497 or gross negligence on the part of a sponsor or advertiser;
498 however, the sponsor or advertiser shall not be considered to be a
499 part of a joint venture or the principal of an agent, with regard
500 to any other person, corporation or legal entity which is
501 participating in the event in any capacity other than that of
502 sponsor or advertiser.

503 **SECTION 19.** The following shall be codified as Section
504 11-7-30, Mississippi Code of 1972:

505 11-7-30. Civil actions in circuit court shall not be
506 assigned to a judge until at least one (1) defendant has filed a
507 responsive pleading.

508 **SECTION 20.** Section 11-1-65, Mississippi Code of 1972, is
509 amended as follows:



510 11-1-65. (1) In any action in which punitive damages are
511 sought:

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

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

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

525 (d) The court shall determine whether the issue of
526 punitive damages may be submitted to the trier of fact; and, if
527 so, the trier of fact shall determine whether to award punitive
528 damages and in what amount.

529 (e) In all cases involving an award of punitive
530 damages, the fact finder, in determining the amount of punitive
531 damages, shall consider, to the extent relevant, the following:
532 the defendant's financial condition and net worth; the nature and
533 reprehensibility of the defendant's wrongdoing, for example, the
534 impact of the defendant's conduct on the plaintiff, or the
535 relationship of the defendant to the plaintiff; the defendant's
536 awareness of the amount of harm being caused and the defendant's
537 motivation in causing such harm; the duration of the defendant's
538 misconduct and whether the defendant attempted to conceal such
539 misconduct; and any other circumstances shown by the evidence that
540 bear on determining a proper amount of punitive damages. The
541 trier of fact shall be instructed that the primary purpose of
542 punitive damages is to punish the wrongdoer and deter similar



543 misconduct in the future by the defendant and others while the
544 purpose of compensatory damages is to make the plaintiff whole.

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

550 (ii) In determining whether the award is
551 excessive, the court shall take into consideration the following
552 factors:

553 1. Whether there is a reasonable relationship
554 between the punitive damage award and the harm likely to result
555 from the defendant's conduct as well as the harm that actually
556 occurred;

557 2. The degree of reprehensibility of the
558 defendant's conduct, the duration of that conduct, the defendant's
559 awareness, any concealment, and the existence and frequency of
560 similar past conduct;

561 3. The financial condition and net worth of
562 the defendant; and

563 4. In mitigation, the imposition of criminal
564 sanctions on the defendant for its conduct and the existence of
565 other civil awards against the defendant for the same conduct.

566 (2) The seller of a product other than the manufacturer
567 shall not be liable for punitive damages unless the seller
568 exercised substantial control over that aspect of the design,
569 testing, manufacture, packaging or labeling of the product that
570 caused the harm for which recovery of damages is sought; the
571 seller altered or modified the product, and the alteration or
572 modification was a substantial factor in causing the harm for
573 which recovery of damages is sought; the seller had actual
574 knowledge of the defective condition of the product at the time he
575 supplied same; or the seller made an express factual



576 representation about the aspect of the product which caused the
577 harm for which recovery of damages is sought.

578 (3) In a civil action against a business where an
579 entitlement to punitive damages shall have been established under
580 applicable laws, no award of punitive damages shall exceed ten
581 percent (10%) of the net worth of the business, unless the finder
582 of fact and court find by clear and convincing evidence that the
583 defendant acted with criminal intent to cause serious physical
584 bodily injury. This restriction shall not be disclosed to the
585 trier of fact, but shall be applied by the court to any punitive
586 damages verdict. The limitations in damages to civil actions
587 seeking punitive damages as provided for in this subsection shall
588 not apply to civil actions seeking punitive damages for breach of
589 fiduciary duty or for action against businesses while engaged in
590 core business activities of money management, providing legal or
591 accounting services, stock or bond brokerage, management of
592 retirement accounts or for those engaged in conduct constituting a
593 crime or for those engaged in conduct which constitutes abuse,
594 exploitation or willful neglect of a vulnerable adult, as those
595 terms are defined in the Mississippi Vulnerable Adult Act.

596 (4) Nothing herein shall be construed as creating a right to
597 an award of punitive damages or to limit the duty of the court, or
598 the appellate courts, to scrutinize all punitive damage awards,
599 ensure that all punitive damage awards comply with applicable
600 procedural, evidentiary and constitutional requirements, and to
601 order additur or remittitur where appropriate.

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

- 604 (a) Contracts;
- 605 (b) Libel and slander; or
- 606 (c) Causes of action for persons and property arising
607 out of asbestos.



608 **SECTION 21.** Section 75-67-103, Mississippi Code of 1972, is
609 amended as follows:

610 75-67-103. (1) The following words and phrases, when used
611 in this article, shall, for the purposes of this article, have the
612 meanings respectively ascribed to them in this section, except
613 where the context clearly describes and indicates a different
614 meaning:

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

618 (b) "Licensee" means and includes every person holding
619 a valid license issued under the provisions of the Small Loan
620 Privilege Tax Law [Sections 75-67-201 through 75-67-243] of this
621 state, except those specifically exempt by the provisions of this
622 article, who, in addition to any other rights and powers he or it
623 might otherwise possess, shall engage in the business of lending
624 money either directly or indirectly, to be paid back in monthly
625 installments or other regular installments for periods of more or
626 less than one (1) month, and whether or not the lender requires
627 security from the borrower as indemnity for the repayment of the
628 loan.

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

632 (d) "Commissioner" means the Commissioner of Banking
633 and Consumer Finance of the State of Mississippi.

634 (e) "Department" means the Department of Banking and
635 Consumer Finance of the State of Mississippi.

636 (f) "Records" or "documents" means any item in hard
637 copy or produced in a format of storage commonly described as
638 electronic, imaged, magnetic, microphotographic or otherwise, and
639 any reproduction so made shall have the same force and effect as



640 the original thereof and be admitted in evidence equally with the
641 original.

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

645 (h) "Consumer loan" means any loan or extension of
646 credit in the principal amount of Twenty Thousand Dollars
647 (\$20,000.00) or less offered or extended primarily for personal,
648 family or household purposes.

649 (i) "Consumer" means any natural person who is
650 obligated on any consumer loan.

651 (2) Paragraphs (g) through (i) of subsection (1) of this
652 section shall stand repealed on July 1, 2004; however, the
653 provisions of paragraphs (g) through (i) of subsection (1) of this
654 section shall remain in full force and effect with respect to any
655 loan agreement that is entered into before July 1, 2004.

656 **SECTION 22.** Section 75-67-119, Mississippi Code of 1972, is
657 amended as follows:

658 75-67-119. (1) If any finance charge in excess of that
659 expressly permitted by Section 75-17-21 is contracted for or
660 received, all finance charges and other charges shall be forfeited
661 and may be recovered, whether the contract be executed or
662 executory. If any finance charge is contracted for or received
663 that exceeds the maximum finance charge authorized by law by more
664 than one hundred percent (100%), the principal and all finance
665 charges and other charges shall be forfeited and any amount paid
666 may be recovered by suit; and, in addition, the licensee and the
667 several members, officers, directors, agents, and employees
668 thereof who shall have participated in such violation shall be
669 guilty of a misdemeanor and, upon conviction thereof, shall be
670 punished by a fine of not more than One Thousand Dollars
671 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
672 the discretion of the court; and, further, the Commissioner of



673 Banking and Consumer Finance shall forthwith cite such licensee to
674 show cause why its license should not be revoked and proceedings
675 thereon shall be as is specifically provided in the Small Loan
676 Privilege Tax Law (Sections 75-67-201 through 75-67-243).

677 (2) If, in connection with a consumer loan, any licensee or
678 other person contracts for or receives, or participates in
679 contracting for or receiving, other charges in violation of any
680 applicable statutory or common law duty, or which are otherwise
681 unlawful, then all those unlawful other charges, all finance
682 charges and all principal shall be forfeited and may be recovered
683 by the consumer, by suit or other proceeding, whether the contract
684 is executed or executory. However, no person who contracts for or
685 receives other charges in violation of any applicable statutory or
686 common law duty, or otherwise unlawfully, shall be subject to
687 forfeiture of principal if the person shows by a preponderance of
688 the evidence that those other charges were contracted for or
689 received unintentionally and as a result of a bona fide error
690 notwithstanding the maintenance of procedures reasonably adapted
691 to avoid any such violation. Examples of bona fide errors
692 include, but are not limited to, clerical, calculation, computer
693 malfunction and programming, and printing errors, except that an
694 error of legal judgment with respect to applicable statutory or
695 common law duty is not a bona fide error.

696 (3) If the other charges subject to forfeiture under this
697 section are found to have been contracted for or received by
698 actual fraud, any penalty recovered under subsection (2) of this
699 section shall be doubled.

700 (4) If a consumer recovers any penalty provided for under
701 subsection (2) of this section, the consumer also may recover
702 damages, to the extent proven by competent evidence, subject to
703 the following limitations:

704 (a) If the amount of the unlawful other charges is One
705 Hundred Dollars (\$100.00) or less, the maximum amount of damages



706 that may be recovered by the consumer as to each individual loan
707 is Three Thousand Dollars (\$3,000.00).

708 (b) If the amount of the unlawful other charges is more
709 than One Hundred Dollars (\$100.00) but less than One Thousand
710 Dollars (\$1,000.00), the maximum amount of damages that may be
711 recovered by the consumer as to each individual loan is Fifteen
712 Thousand Dollars (\$15,000.00).

713 (c) If the amount of the unlawful other charges is not
714 less than One Thousand Dollars (\$1,000.00) but less than Two
715 Thousand Dollars (\$2,000.00), the maximum amount of damages that
716 may be recovered by the consumer as to each individual loan is
717 Thirty Thousand Dollars (\$30,000.00).

718 (d) If the amount of the unlawful other charges is not
719 less than Two Thousand Dollars (\$2,000.00) but less than Five
720 Thousand Dollars (\$5,000.00), the maximum amount of damages that
721 may be recovered by the consumer as to each individual loan is
722 Forty-five Thousand Dollars (\$45,000.00).

723 (e) If the amount of the unlawful other charges is not
724 less than Five Thousand Dollars (\$5,000.00), the maximum amount of
725 damages that may be recovered by the consumer as to each
726 individual loan is Sixty Thousand Dollars (\$60,000.00).

727 (5) If any penalty is recovered under subsection (2) of this
728 section, a reasonable attorney's fee also shall be recovered from
729 the offending party by the consumer.

730 (6) Except as provided in subsection (7) of this section,
731 the remedies, penalties and damages provided for in this section
732 shall be the exclusive remedies, penalties and damages for
733 contracting for or receiving any finance charge in excess of that
734 expressly permitted by Section 75-17-21, or for contracting for or
735 receiving, or participating in contracting for or receiving, other
736 charges in violation of any applicable statutory or common law
737 duty, or which are otherwise unlawful.



738 (7) The remedies, penalties and damages provided for in this
739 section are supplemental to the defense provided in Section
740 75-67-127(3) and to the enforcement powers conferred upon the
741 Commissioner of Banking and Consumer Finance.

742 (8) No action for recovery of any penalty or damages
743 provided for under this section may be brought unless it is filed
744 within one (1) year after the date of the act or event that
745 created the cause of action. However, if the act or event that
746 created the cause of action occurred before the effective date of
747 House Bill No. , Third Extraordinary Session 2002, no action for
748 recovery of any penalty or damages provided for under this section
749 based on that cause of action may be brought unless it is filed
750 within one (1) year after the effective date of House Bill No. ,
751 Third Extraordinary Session 2002.

752 (9) Subsections (2) through (8) of this section shall stand
753 repealed on July 1, 2004; however, the provisions of subsections
754 (2) through (8) of this section shall remain in full force and
755 effect with respect to any loan agreement that is entered into
756 before July 1, 2004.

757 **SECTION 23.** Section 75-17-25, Mississippi Code of 1972, is
758 amended as follows:

759 75-17-25. (1) The term "finance charge" as used in this
760 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
761 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
762 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
763 payable, directly or indirectly, by a debtor for receiving a loan
764 or incident to or as a condition of the extension of credit,
765 including, but not limited to, interest, brokerage fees, finance
766 charges, loan fees, discount, points, service charges, transaction
767 charges, activity charges, carrying charges, time price
768 differential, finders fees or any other cost or expense to the
769 debtor for services rendered or to be rendered to the debtor in
770 making, arranging or negotiating a loan of money or an extension



771 of credit and for the accounting, guaranteeing, endorsing,
772 collecting and other actual services rendered by the lender;
773 provided, however, that recording fees, motor vehicle title fees,
774 attorney's fees, insurance premiums, fees permitted to be charged
775 under the provisions of Section 79-7-7, service charges as
776 provided in Section 81-19-31, and with respect to a debt secured
777 by an interest in land, bona fide closing costs and appraisal fees
778 incidental to the transaction shall not be included in the finance
779 charge.

780 (2) Subject to the other provisions of this section,
781 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
782 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
783 75-67-127 and 75-67-217, the finance charge may be calculated on
784 the assumption that the indebtedness will be discharged as it
785 becomes due, and prepayment penalties and statutory default
786 charges shall not be included in the finance charge. Nothing in
787 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,
788 75-17-27, 75-17-29 or 75-17-33 shall limit or restrict the manner
789 of contracting for such finance charge, whether by way of add-on,
790 discount or otherwise, so long as the annual percentage rate does
791 not exceed that permitted by law. If a greater finance charge
792 than that authorized by applicable law shall be stipulated for or
793 received in any case, all interest and finance charge shall be
794 forfeited, and may be recovered back, whether the contract be
795 executed or executory. If a finance charge be contracted for or
796 received that exceeds the maximum authorized by law by more than
797 one hundred percent (100%), the principal and all finance charges
798 shall be forfeited and any amount paid may be recovered by suit.
799 The provisions of this section, Section 75-17-1 and Sections
800 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
801 shall not restrict the extension of credit pursuant to any other
802 applicable law. A licensee under the Small Loan Regulatory Law
803 (Sections 75-67-101 through 75-67-135), and the Small Loan



804 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may
805 contract for and receive finance charges as authorized by Section
806 75-17-21, and the late payment charge as authorized by Section
807 75-17-27, regardless of the purpose for which the loan or other
808 extension of credit is made.

809 (3) If, in connection with a consumer loan, any person
810 contracts for or receives, or participates in contracting for or
811 receiving, other charges in violation of any applicable statutory
812 or common law duty, or which are otherwise unlawful, then all
813 those unlawful other charges, all finance charges and all
814 principal shall be forfeited and may be recovered by the consumer,
815 by suit or other proceeding, whether the contract is executed or
816 executory. However, no person who contracts for or receives other
817 charges in violation of any applicable statutory or common law
818 duty, or otherwise unlawfully, shall be subject to forfeiture of
819 principal if the person shows by a preponderance of the evidence
820 that those other charges were contracted for or received
821 unintentionally and as a result of a bona fide error
822 notwithstanding the maintenance of procedures reasonably adapted
823 to avoid any such violation. Examples of bona fide errors
824 include, but are not limited to, clerical, calculation, computer
825 malfunction and programming, and printing errors, except that an
826 error of legal judgment with respect to applicable statutory or
827 common law duty is not a bona fide error.

828 (4) If the other charges subject to forfeiture under this
829 section are found to have been contracted for or received by
830 actual fraud, any penalty recovered under subsection (3) of this
831 section shall be doubled.

832 (5) If a consumer recovers any penalty provided for under
833 subsection (3) of this section, the consumer also may recover
834 damages, to the extent proven by competent evidence, subject to
835 the following limitations:



836 (a) If the amount of the unlawful other charges is One
837 Hundred Dollars (\$100.00) or less, the maximum amount of damages
838 that may be recovered by the consumer as to each individual loan
839 is Three Thousand Dollars (\$3,000.00).

840 (b) If the amount of the unlawful other charges is more
841 than One Hundred Dollars (\$100.00) but less than One Thousand
842 Dollars (\$1,000.00), the maximum amount of damages that may be
843 recovered by the consumer as to each individual loan is Fifteen
844 Thousand Dollars (\$15,000.00).

845 (c) If the amount of the unlawful other charges is not
846 less than One Thousand Dollars (\$1,000.00) but less than Two
847 Thousand Dollars (\$2,000.00), the maximum amount of damages that
848 may be recovered by the consumer as to each individual loan is
849 Thirty Thousand Dollars (\$30,000.00).

850 (d) If the amount of the unlawful other charges is not
851 less than Two Thousand Dollars (\$2,000.00) but less than Five
852 Thousand Dollars (\$5,000.00), the maximum amount of damages that
853 may be recovered by the consumer as to each individual loan is
854 Forty-five Thousand Dollars (\$45,000.00).

855 (e) If the amount of the unlawful other charges is not
856 less than Five Thousand Dollars (\$5,000.00), the maximum amount of
857 damages that may be recovered by the consumer as to each
858 individual loan is Sixty Thousand Dollars (\$60,000.00).

859 (6) If any penalty is recovered under subsection (3) of this
860 section, a reasonable attorney's fee also shall be recovered from
861 the offending party by the consumer.

862 (7) The remedies, penalties and damages provided for in this
863 section shall be the exclusive remedies, penalties and damages for
864 contracting for or receiving any finance charge in excess of that
865 permitted by applicable law, or for contracting for or receiving,
866 or participating in contracting for or receiving, other charges in
867 violation of any applicable statutory or common law duty, or which
868 are otherwise unlawful.



869 (8) As used in this section:

870 (a) "Consumer loan" means any loan or extension of
871 credit offered or extended in the principal amount of Twenty
872 Thousand Dollars (\$20,000.00) or less primarily for personal,
873 family or household purposes.

874 (b) "Consumer" means any natural person obligated on
875 any consumer loan.

876 (c) "Other charges" means any amounts contracted for or
877 received by any person in connection with a consumer loan, other
878 than finance charges as defined in this section.

879 (9) No action for recovery of any penalty or damages
880 provided for under this section may be brought unless it is filed
881 within one (1) year after the date of the act or event that
882 created the cause of action. However, if the act or event that
883 created the cause of action occurred before the effective date of
884 House Bill No. , Third Extraordinary Session 2002, no action for
885 recovery of any penalty or damages provided for under this section
886 based on that cause of action may be brought unless it is filed
887 within one (1) year after the effective date of House Bill No. ,
888 Third Extraordinary Session 2002.

889 (10) Subsections (3) through (9) of this section shall stand
890 repealed on July 1, 2004; however, the provisions of subsections
891 (3) through (9) of this section shall remain in full force and
892 effect with respect to any loan agreement that is entered into
893 before July 1, 2004.

894 **SECTION 24.** If any provision of this act is held by a court
895 to be invalid, such invalidity shall not affect the remaining
896 provisions of this act, and to this end the provisions of this act
897 are declared severable.

898 **SECTION 25.** This act shall take effect and be in force from
899 and after its passage, and shall apply only to causes of action
900 occurring on or after that date.

