

By: Representatives Capps,
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To: Select Committee on
Civil Justice Reform

HOUSE BILL NO. 18

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, AS
2 AMENDED BY HOUSE BILL NO. 2, THIRD EXTRAORDINARY SESSION 2002, TO
3 REVISE THE VENUE IN GENERAL CIVIL ACTIONS; TO REPEAL SECTIONS
4 11-11-5, 11-11-7, 11-11-11 AND 11-11-13, MISSISSIPPI CODE OF 1972,
5 WHICH PROVIDE VENUE IN ACTIONS AGAINST NONRESIDENTS, NONRESIDENT
6 MOTORISTS, RAILROADS AND INSURANCE COMPANIES; TO CREATE NEW
7 SECTION 11-1-64, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A
8 PRODUCT SELLER OTHER THAN A MANUFACTURER SHALL NOT BE LIABLE FOR A
9 LATENT DEFECT IF THE SELLER IS A MERE CONDUIT WHO PURCHASED THE
10 PRODUCT FROM A REPUTABLE MANUFACTURER; TO AMEND SECTION 11-1-63,
11 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION
12 85-5-7, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 2,
13 THIRD EXTRAORDINARY SESSION 2002, TO REVISE THE LIMITATION OF
14 JOINT AND SEVERAL LIABILITY FOR DAMAGES CAUSED BY TWO OR MORE
15 PERSONS; TO AMEND SECTION 7 OF HOUSE BILL NO. 2, THIRD
16 EXTRAORDINARY SESSION 2002, TO PROVIDE LIMITATIONS ON NONECONOMIC
17 DAMAGES IN CIVIL ACTIONS; TO AMEND SECTION 11-1-65, MISSISSIPPI
18 CODE OF 1972, TO IMPOSE A LIMITATION ON PUNITIVE DAMAGES AND TO
19 PROVIDE THAT 50% OF AN AWARD FOR PUNITIVE DAMAGES SHALL BE
20 DEPOSITED INTO THE STATE GENERAL FUND; TO LIMIT THE LIABILITY OF
21 THE SPONSOR OF AN EVENT IN THE CASE OF A CIVIL ACTION ARISING OUT
22 OF ACTIVITIES OCCURRING ON THE PREMISES OF THE LOCATION WHERE THE
23 EVENT IS HELD OR CONDUCTED, PROVIDED THAT THE SPONSOR DOES NOT
24 EXERCISE CONTROL OVER ANY ASPECT OF THE EVENT OTHER THAN ACTING AS
25 SPONSOR; TO DEFINE THE TERMS "SPONSOR" AND "EVENT"; TO PROVIDE
26 THAT THIS LIMITATION OF LIABILITY SHALL NOT EXTEND TO WILLFUL ACTS
27 OR GROSS NEGLIGENCE ON THE PART OF A SPONSOR; TO AMEND SECTION
28 67-3-73, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THERE IS NO
29 LIABILITY TO A WHOLESALER OF BEER AND LIGHT WINE FOR THE LAWFUL
30 DISTRIBUTION TO A RETAIL PERMITTEE; TO PROVIDE IMMUNITY FOR A
31 PREMISES OWNER UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE THAT CIVIL
32 ACTIONS SHALL NOT BE ASSIGNED TO A JUDGE UNTIL AT LEAST ONE
33 DEFENDANT HAS FILED A RESPONSIVE PLEADING; TO PROHIBIT RECOVERY OF
34 HEDONIC DAMAGES IN CIVIL ACTIONS; TO PROVIDE THAT PAYMENTS FROM
35 COLLATERAL SOURCES SHALL BE REDUCED FROM AWARDS IN CIVIL ACTIONS;
36 TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972, TO REVISE
37 THE DEFINITIONS UNDER THE SMALL LOAN REGULATORY LAW TO INCLUDE A
38 DEFINITION OF THE TERM "OTHER CHARGES"; TO AMEND SECTIONS
39 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THE
40 REMEDY FOR CONTRACTING FOR AND RECEIVING UNLAWFUL OTHER CHARGES;
41 TO PROVIDE THAT THE AUTHORITY TO SUE ANY FIREARMS OR AMMUNITION
42 MANUFACTURER, DISTRIBUTOR OR DEALER ON BEHALF OF LOCAL
43 GOVERNMENTAL ENTITIES FOR CERTAIN CAUSES OF ACTION SHALL BE
44 EXCLUSIVELY RESERVED TO THE STATE; TO REPEAL SECTIONS 11-3-23 AND
45 11-3-25, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
46 ASSESSMENT OF A PENALTY ON CERTAIN JUDGMENTS APPEALED TO THE
47 SUPREME COURT; AND FOR RELATED PURPOSES.

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



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

52 11-11-3. * * * Civil actions of which the circuit court has
53 original jurisdiction shall be commenced in the county where the
54 alleged act or omission occurred or where the event that caused
55 the injury occurred. Civil actions alleging a defective product
56 shall be commenced in the county where the plaintiff purchased the
57 product. Venue shall be proper as to each and every named
58 plaintiff. If the venue is improper as to any plaintiff, then the
59 claims involving that plaintiff shall be severed and transferred
60 to a county where venue is proper as to such claims, or dismissed
61 without prejudice if there exists no county of proper venue.

62 * * *

63 **SECTION 2.** Sections 11-11-5, 11-11-7, 11-11-11 and 11-11-13,
64 Mississippi Code of 1972, which provide venue in actions against
65 nonresidents, nonresident motorists, railroads and insurance
66 companies, are hereby repealed.

67 **SECTION 3.** The following shall be codified as Section
68 11-1-64, Mississippi Code of 1972:

69 11-1-64. (1) In any civil action alleging damages caused by
70 a product, a product seller other than a manufacturer shall not be
71 liable for a latent defect if the seller is a mere conduit who
72 purchased the product from a reputable manufacturer. It is the
73 intent of this section to insulate innocent sellers who are not
74 actively negligent from forum-driven lawsuits.

75 (2) A product seller shall not be considered to have failed
76 to exercise reasonable care with respect to a product, based upon
77 an alleged failure to inspect the product, if there was no
78 reasonable opportunity to inspect the product; or the inspection,
79 in the exercise of reasonable care, would not have revealed that
80 the product was defective.



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

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

86 11-1-63. In any action for damages caused by a product
87 except for commercial damage to the product itself:

88 (a) Subject to the provisions of Section 11-1-64, the
89 manufacturer or seller of the product shall not be liable if the
90 claimant does not prove by the preponderance of the evidence that
91 at the time the product left the control of the manufacturer or
92 seller:

93 (i) 1. The product was defective because it
94 deviated in a material way from the manufacturer's specifications
95 or from otherwise identical units manufactured to the same
96 manufacturing specifications, or

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

99 3. The product was designed in a defective
100 manner, or

101 4. The product breached an express warranty
102 or failed to conform to other express factual representations upon
103 which the claimant justifiably relied in electing to use the
104 product; and

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

107 (iii) The defective and unreasonably dangerous
108 condition of the product proximately caused the damages for which
109 recovery is sought.

110 (b) A product is not defective in design or formulation
111 if the harm for which the claimant seeks to recover compensatory
112 damages was caused by an inherent characteristic of the product
113 which is a generic aspect of the product that cannot be eliminated



114 without substantially compromising the product's usefulness or
115 desirability and which is recognized by the ordinary person with
116 the ordinary knowledge common to the community.

117 (c) (i) In any action alleging that a product is
118 defective because it failed to contain adequate warnings or
119 instructions pursuant to paragraph (a)(i)2 of this section, the
120 manufacturer or seller shall not be liable if the claimant does
121 not prove by the preponderance of the evidence that at the time
122 the product left the control of the manufacturer or seller, the
123 manufacturer or seller knew or in light of reasonably available
124 knowledge should have known about the danger that caused the
125 damage for which recovery is sought and that the ordinary user or
126 consumer would not realize its dangerous condition.

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

140 (d) In any action alleging that a product is defective
141 pursuant to paragraph (a) of this section, the manufacturer or
142 seller shall not be liable if the claimant (i) had knowledge of a
143 condition of the product that was inconsistent with his safety;
144 (ii) appreciated the danger in the condition; and (iii)
145 deliberately and voluntarily chose to expose himself to the danger



146 in such a manner to register assent on the continuance of the
147 dangerous condition.

148 (e) In any action alleging that a product is defective
149 pursuant to paragraph (a)(i)2 of this section, the manufacturer or
150 seller shall not be liable if the danger posed by the product is
151 known or is open and obvious to the user or consumer of the
152 product, or should have been known or open and obvious to the user
153 or consumer of the product, taking into account the
154 characteristics of, and the ordinary knowledge common to, the
155 persons who ordinarily use or consume the product.

156 (f) In any action alleging that a product is defective
157 because of its design pursuant to paragraph (a)(i)3 of this
158 section, the manufacturer or product seller shall not be liable if
159 the claimant does not prove by the preponderance of the evidence
160 that at the time the product left the control of the manufacturer
161 or seller:

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

166 (ii) The product failed to function as expected
167 and there existed a feasible design alternative that would have to
168 a reasonable probability prevented the harm. A feasible design
169 alternative is a design that would have to a reasonable
170 probability prevented the harm without impairing the utility,
171 usefulness, practicality or desirability of the product to users
172 or consumers.

173 (g) (i) The manufacturer of a product who is found
174 liable for a defective product pursuant to paragraph (a) shall
175 indemnify a product seller for the costs of litigation, any
176 reasonable expenses, reasonable attorney's fees and any damages
177 awarded by the trier of fact unless the seller exercised
178 substantial control over that aspect of the design, testing,



179 manufacture, packaging or labeling of the product that caused the
180 harm for which recovery of damages is sought; the seller altered
181 or modified the product, and the alteration or modification was a
182 substantial factor in causing the harm for which recovery of
183 damages is sought; the seller had actual knowledge of the
184 defective condition of the product at the time he supplied same;
185 or the seller made an express factual representation about the
186 aspect of the product which caused the harm for which recovery of
187 damages is sought.

188 (ii) Subparagraph (i) shall not apply unless the
189 seller has given prompt notice of the suit to the manufacturer
190 within thirty (30) days of the filing of the complaint against the
191 seller.

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

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

198 85-5-7. (1) As used in this section "fault" means an act or
199 omission of a person which is a proximate cause of injury or death
200 to another person or persons, damages to property, tangible or
201 intangible, or economic injury, including, but not limited to,
202 negligence, malpractice, strict liability, absolute liability or
203 failure to warn. "Fault" shall not include any tort which results
204 from an act or omission committed with a specific wrongful intent.

205 * * *

206 (2) Except as may be otherwise provided in subsection (4) of
207 this section, in any civil action based on fault, the liability
208 for damages caused by two (2) or more persons shall be several
209 only, and not joint and several and a joint tort-feasor shall be
210 liable only for the amount of damages allocated to him in direct
211 proportion to his percentage of fault. In assessing percentages



212 of fault, an employer and the employer's employee or a principal
213 and the principal's agent shall be considered as one (1) defendant
214 when the liability of such employer or principal has been caused
215 by the wrongful or negligent act or omission of the employee or
216 agent.

217 * * *

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

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

227 (5) In actions involving joint tort-feasors, the trier of
228 fact shall determine the percentage of fault for each joint
229 tort-feasor, including named parties and absent tort-feasors
230 without regard to whether the joint tort-feasor is immune from
231 damages. Fault allocated to an immune tort-feasor or a
232 tort-feasor whose liability is limited by law shall not be
233 reallocated to any other tort-feasor.

234 * * *

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

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

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

243 (a) "Noneconomic damages" means subjective,
244 nonpecuniary damages arising from death, pain, suffering,



245 inconvenience, mental anguish, worry, emotional distress, loss of
246 society and companionship, loss of consortium, bystander injury,
247 physical impairment, injury to reputation, humiliation,
248 embarrassment, * * * other nonpecuniary damages, and any other
249 theory of damages such as fear of loss, illness or injury. The
250 term "noneconomic damages" shall not include damages for
251 disfigurement, nor does it include punitive or exemplary damages.

252 (b) "Actual economic damages" means objectively
253 verifiable pecuniary damages arising from medical expenses and
254 medical care, rehabilitation services, custodial care,
255 disabilities, loss of earnings and earning capacity, loss of
256 income, burial costs, loss of use of property, costs of repair or
257 replacement of property, costs of obtaining substitute domestic
258 services, loss of employment, loss of business or employment
259 opportunities, and other objectively verifiable monetary losses.

260 * * *

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

264 (i) For claims for causes of action filed on or
265 after passage of House Bill No. , Third Extraordinary Session
266 2002, but before July 1, 2011, the sum of Five Hundred Thousand
267 Dollars (\$500,000.00);

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

271 (iii) For claims for causes of action filed on or
272 after July 1, 2017, the sum of One Million Dollars
273 (\$1,000,000.00).

274 * * *

275 (b) The jury shall not be advised of the limitations
276 imposed by this subsection (2) and the judge shall appropriately



277 reduce any award of noneconomic damages that exceeds the
278 applicable limitation.

279 * * *

280 (3) Nothing in this section shall be construed to impose a
281 limitation on damages for disfigurement or actual economic
282 damages.

283 (4) Whether an element of damages may or may not be
284 recovered in any action shall not be governed by the provisions of
285 this section, but shall be governed by applicable statutory or
286 common law.

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

289 11-1-65. (1) In any action in which punitive damages are
290 sought:

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

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

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

304 (d) The court shall determine whether the issue of
305 punitive damages may be submitted to the trier of fact; and, if
306 so, the trier of fact shall determine whether to award punitive
307 damages and in what amount.

308 (e) In all cases involving an award of punitive
309 damages, the fact finder, in determining the amount of punitive



310 damages, shall consider, to the extent relevant, the following:
311 the defendant's financial condition and net worth; the nature and
312 reprehensibility of the defendant's wrongdoing, for example, the
313 impact of the defendant's conduct on the plaintiff, or the
314 relationship of the defendant to the plaintiff; the defendant's
315 awareness of the amount of harm being caused and the defendant's
316 motivation in causing such harm; the duration of the defendant's
317 misconduct and whether the defendant attempted to conceal such
318 misconduct; and any other circumstances shown by the evidence that
319 bear on determining a proper amount of punitive damages. The
320 trier of fact shall be instructed that the primary purpose of
321 punitive damages is to punish the wrongdoer and deter similar
322 misconduct in the future by the defendant and others while the
323 purpose of compensatory damages is to make the plaintiff whole.

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

329 (ii) In determining whether the award is
330 excessive, the court shall take into consideration the following
331 factors:

332 1. Whether there is a reasonable relationship
333 between the punitive damage award and the harm likely to result
334 from the defendant's conduct as well as the harm that actually
335 occurred;

336 2. The degree of reprehensibility of the
337 defendant's conduct, the duration of that conduct, the defendant's
338 awareness, any concealment, and the existence and frequency of
339 similar past conduct;

340 3. The financial condition and net worth of
341 the defendant; and



342 4. In mitigation, the imposition of criminal
343 sanctions on the defendant for its conduct and the existence of
344 other civil awards against the defendant for the same conduct.

345 (g) Fifty percent (50%) of any award for punitive
346 damages in civil actions shall be payable to the state and fifty
347 percent (50%) to the individual plaintiff or plaintiffs who bring
348 the suit. The state's portion of the damage award shall be
349 deposited by the clerk of the court into the State General Fund
350 with a pro rata portion of attorney's fees and costs to be
351 deducted from the state's portion.

352 (2) The seller of a product other than the manufacturer
353 shall not be liable for punitive damages unless the seller
354 exercised substantial control over that aspect of the design,
355 testing, manufacture, packaging or labeling of the product that
356 caused the harm for which recovery of damages is sought; the
357 seller altered or modified the product, and the alteration or
358 modification was a substantial factor in causing the harm for
359 which recovery of damages is sought; the seller had actual
360 knowledge of the defective condition of the product at the time he
361 supplied same; or the seller made an express factual
362 representation about the aspect of the product which caused the
363 harm for which recovery of damages is sought.

364 (3) In all civil actions where an entitlement to punitive
365 damages shall have been established under applicable laws, no
366 award of punitive damages shall exceed the greater of three (3)
367 times the amount of the total compensatory damages awarded to the
368 plaintiff in an action or Five Million Dollars (\$5,000,000.00);
369 however, if the defendant is an individual or a business with less
370 than fifty (50) full-time employees, an award of punitive damages
371 shall not exceed two (2) times the amount of the plaintiff's
372 compensatory damages or Two Million Dollars (\$2,000,000.00) or
373 three percent (3%) of such defendant's net worth, whichever is
374 less, unless the finder of fact and court find by clear and



375 convincing evidence that the defendant acted with criminal intent
376 to cause serious physical bodily injury. This restriction shall
377 not be disclosed to the trier of fact, but shall be applied by the
378 court to any punitive damages verdict.

379 (4) Nothing herein shall be construed as creating a right to
380 an award of punitive damages or to limit the duty of the court, or
381 the appellate courts, to scrutinize all punitive damage awards,
382 ensure that all punitive damage awards comply with applicable
383 procedural, evidentiary and constitutional requirements, and to
384 order remittitur where appropriate.

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

387 (a) Contracts;

388 (b) Libel and slander; or

389 (c) Causes of action for persons and property arising
390 out of asbestos.

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

394 (a) "Sponsor" means any person, corporation or legal
395 entity which, for charitable purposes or to promote good will in
396 the community, (i) sells, rents, manufactures or provides
397 products, equipment or promotional materials, or (ii) donates or
398 contributes money or fees in order that an event may be held or
399 conducted.

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

404 (2) (a) Any sponsor of an event, which does not exercise
405 control over any aspect of the event other than acting as a
406 sponsor, shall be immune from liability for any civil action



407 arising out of activities occurring on the premises of the
408 location where the event is held or conducted.

409 (b) No sponsor shall be liable to a person who may
410 lawfully consume any intoxicating beverage for any injury suffered
411 by such person, or by any other person, off the premises of the
412 event, including wrongful death and property damage, because of
413 the intoxication of the person to whom the intoxicating beverages
414 were served or furnished when on the premises of the event.

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

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

423 67-3-73. (1) The Mississippi Legislature finds and declares
424 that the consumption of intoxicating beverages, rather than the
425 sale or serving or furnishing of such beverages, is the proximate
426 cause of any injury, including death and property damage,
427 inflicted by an intoxicated person upon himself or upon another
428 person.

429 (2) Notwithstanding any other law to the contrary, no holder
430 of an alcoholic beverage, beer or light wine permit, or any agent
431 or employee of such holder, who lawfully sells or serves
432 intoxicating beverages to a person who may lawfully purchase such
433 intoxicating beverages, shall be liable to such person or to any
434 other person or to the estate, or survivors of either, for any
435 injury suffered off the licensed premises, including wrongful
436 death and property damage, because of the intoxication of the
437 person to whom the intoxicating beverages were sold or served.

438 (3) Notwithstanding any other law to the contrary, no social
439 host who serves or furnishes any intoxicating beverage to a person



440 who may lawfully consume such intoxicating beverage shall be
441 liable to such person or to any other person or to the estate, or
442 survivors of either, for any injury suffered off such social
443 host's premises, including wrongful death and property damage,
444 because of the intoxication of the person to whom the intoxicating
445 beverages were served or furnished. No social host who owns,
446 leases or otherwise lawfully occupies a premises on which, in his
447 absence and without his consent, intoxicating beverages are
448 consumed by a person who may lawfully consume such intoxicating
449 beverage shall be liable to such person or to any other person or
450 to the estate, or survivors of either, for any injury suffered off
451 the premises, including wrongful death and property damage,
452 because of the intoxication of the person who consumed the
453 intoxicating beverages.

454 (4) The limitation of liability provided by this section
455 shall not apply to any person who causes or contributes to the
456 consumption of alcoholic beverages by force or by falsely
457 representing that a beverage contains no alcohol, or to any holder
458 of an alcoholic beverage, beer or light wine permit, or any agent
459 or employee of such holder when it is shown that the person making
460 a purchase of an alcoholic beverage was at the time of such
461 purchase visibly intoxicated.

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

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

470 **SECTION 11.** Civil actions in circuit, chancery and county
471 court shall not be assigned to a judge until at least one (1)
472 defendant has filed a responsive pleading. However, any necessary



473 preliminary matters may be decided by a judge on a separate
474 rotating basis before assignment of the action to a particular
475 judge.

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

481 **SECTION 13.** On motion by a defendant or upon its own motion,
482 the court shall hear evidence of any amount of such damages
483 incurred prior to the judgment which the defendant or defendants
484 claim was replaced, compensated or indemnified pursuant to the
485 United States Social Security Act, any state or federal
486 income-disability act, any health, sickness or income-disability
487 insurance, any accident insurance that provides health benefits or
488 income-disability coverage, any contract or agreement of any
489 group, organization, partnership, or corporation to provide, pay
490 for or reimburse the cost of medical, hospital, dental or other
491 health care services, any contract or agreement to continue to
492 pay, in whole or in part, the plaintiff's wages or income, or any
493 other collateral source of benefits whatsoever. If the defendant
494 elects to introduce such evidence, the plaintiff may introduce
495 evidence of any amount the plaintiff himself paid or contributed
496 to secure his right to the benefits concerning which the defendant
497 has introduced evidence. The plaintiff may also introduce
498 evidence of any leave time lost due to the personal injury. The
499 presiding judge shall reduce the jury award by the amount of such
500 benefits less any amount which the plaintiff has paid or
501 contributed to secure such benefits. There shall be no reduction
502 for collateral sources for which a subrogation or reimbursement
503 right exists. Such reduction shall be offset to the extent of any
504 amount which has been paid, contributed, or forfeited by, or on
505 behalf of, the claimant or members of the claimant's immediate



506 family to secure her or his right to any collateral source benefit
507 which the claimant is receiving as a result of her or his injury.

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

510 75-67-103. The following words and phrases, when used in
511 this article, shall, for the purposes of this article, have the
512 meanings respectively ascribed to them in this section, except
513 where the context clearly describes and indicates a different
514 meaning:

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

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

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

532 (d) "Commissioner" means the Commissioner of Banking
533 and Consumer Finance of the State of Mississippi.

534 (e) "Department" means the Department of Banking and
535 Consumer Finance of the State of Mississippi.

536 (f) "Records" or "documents" means any item in hard
537 copy or produced in a format of storage commonly described as
538 electronic, imaged, magnetic, microphotographic or otherwise, and



539 any reproduction so made shall have the same force and effect as
540 the original thereof and be admitted in evidence equally with the
541 original.

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

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

547 75-67-119. (1) If any finance charge in excess of that
548 expressly permitted by Section 75-17-21 is contracted for or
549 received, all finance charges and other charges shall be forfeited
550 and may be recovered, whether the contract be executed or
551 executory. If any finance charge is contracted for or received
552 that exceeds the maximum finance charge authorized by law by more
553 than one hundred percent (100%), the principal and all finance
554 charges and other charges shall be forfeited and any amount paid
555 may be recovered by suit; and, in addition, the licensee and the
556 several members, officers, directors, agents, and employees
557 thereof who shall have participated in such violation shall be
558 guilty of a misdemeanor and, upon conviction thereof, shall be
559 punished by a fine of not more than One Thousand Dollars
560 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
561 the discretion of the court; and, further, the Commissioner of
562 Banking and Consumer Finance shall forthwith cite such licensee to
563 show cause why its license should not be revoked and proceedings
564 thereon shall be as is specifically provided in the Small Loan
565 Privilege Tax Law (Sections 75-67-201 through 75-67-243).

566 (2) (a) If any licensee or other person violates any
567 provision of this article or any rule or regulation promulgated
568 pursuant to this article or any provision of Title 75, Chapter 17,
569 Mississippi Code of 1972, or contracts for or receives, or
570 participates in contracting for or receiving, other charges in



571 violation of any applicable statutory or common law duty, or which
572 are otherwise unlawful for any reason:

573 (i) All such other charges plus interest accrued
574 thereon at the rate of eight percent (8%) per annum shall be
575 forfeited and may be recovered, whether the contract be executed
576 or executory;

577 (ii) If the other charges subject to forfeiture
578 under this section exceed Five Hundred Dollars (\$500.00), all
579 finance charges shall additionally be forfeited and may be
580 recovered;

581 (iii) If the other charges subject to forfeiture
582 under this section exceed One Thousand Five Hundred Dollars
583 (\$1,500.00), all principal shall additionally be forfeited and may
584 be recovered.

585 (b) If the other charges subject to forfeiture under
586 this section are found by the trier of fact and the court to have
587 been contracted for or received as a result of fraud, then an
588 award of three (3) times the other charges subject to forfeiture
589 or One Thousand Dollars (\$1,000.00), whichever is greater, plus
590 reasonable attorney's fees may be made in addition to the
591 penalties provided in this subsection (2).

592 (3) The right to recover the penalties provided in
593 subsection (2)(a)(ii) and (iii) shall accrue only after: (a)
594 written notice of the violation is given to the licensee by
595 certified mail addressed to the licensee's place of business as
596 shown in the credit transaction documents or such notice is given
597 by certified mail to the licensee's agent for service of process;
598 and (b) thirty (30) days have elapsed since receipt of such notice
599 by the licensee and the violation has not been corrected by refund
600 or by credit to the borrower's remaining obligation in the amount
601 required by subsection (2)(a)(i). In the case of multiple
602 violations involving a common violation affecting more than one
603 hundred (100) borrowers, the licensee must notify the commissioner



604 and correct the violation as to each affected borrower within
605 thirty (30) days after receipt of a borrower notice, but the
606 commissioner may extend the time for correction for good reason.
607 The penalties provided for in subsection (2)(a)(ii) and (iii)
608 shall not apply if it is proven by a preponderance of the evidence
609 that the violation was not intentional and resulted from a bona
610 fide error notwithstanding the maintenance of procedures
611 reasonably adapted to avoid any such error, except that the
612 licensee may be required to correct the error by refund or credit
613 to the borrower's remaining obligation in the amount required by
614 subsection (2)(a)(i). Failure to refund or give credit for an
615 unlawful other charge within thirty (30) days after receipt of a
616 borrower notice or, in the case of multiple violations, failure to
617 give the commissioner the required notice within the specified
618 time, shall give rise to a rebuttable presumption that the
619 violation was not the result of a bona fide error for purposes of
620 subsection (2). The penalties provided for in subsection
621 (2)(a)(ii) and (iii) shall not apply if the licensee discovers the
622 problem itself or is notified of the problem by the commissioner
623 and within sixty (60) days after discovering the violation, and
624 prior to the receipt of written notice of the violation from the
625 borrower as provided herein, the licensee notifies the affected
626 borrower of the violation and either refunds or gives credit in
627 the amount required by subsection (2)(a)(i).

628 (4) Except as provided in subsection (5) of this section,
629 the remedies and penalties provided in this section shall be the
630 exclusive remedies and penalties for all claims against a licensee
631 or any other person for contracting for or receiving any finance
632 charge in excess of that expressly permitted by Section 75-17-21,
633 or for violation of any provision of this article or any rule or
634 regulation promulgated pursuant to this article or any provision
635 of Title 75, Chapter 17, Mississippi Code of 1972, or for
636 contracting for or receiving, or participating in contracting for



637 or receiving, other charges in violation of any applicable
638 statutory or common law duty, or which are otherwise unlawful.

639 (5) The remedies and penalties provided in this section are
640 supplemental to the defense provided in Section 75-67-127(3) and
641 to the enforcement powers conferred upon the Commissioner of
642 Banking and Consumer Finance.

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

645 75-17-25. (1) The term "finance charge" as used in this
646 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
647 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
648 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
649 payable, directly or indirectly, by a debtor for receiving a loan
650 or incident to or as a condition of the extension of credit,
651 including, but not limited to, interest, brokerage fees, finance
652 charges, loan fees, discount, points, service charges, transaction
653 charges, activity charges, carrying charges, time price
654 differential, finders fees or any other cost or expense to the
655 debtor for services rendered or to be rendered to the debtor in
656 making, arranging or negotiating a loan of money or an extension
657 of credit and for the accounting, guaranteeing, endorsing,
658 collecting and other actual services rendered by the lender;
659 provided, however, that recording fees, motor vehicle title fees,
660 attorney's fees, insurance premiums, fees permitted to be charged
661 under the provisions of Section 79-7-7, service charges as
662 provided in Section 81-19-31, and with respect to a debt secured
663 by an interest in land, bona fide closing costs and appraisal fees
664 incidental to the transaction shall not be included in the finance
665 charge.

666 (2) Subject to the other provisions of this section,
667 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
668 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
669 75-67-127 and 75-67-217, the finance charge may be calculated on



670 the assumption that the indebtedness will be discharged as it
671 becomes due, and prepayment penalties and statutory default
672 charges shall not be included in the finance charge. Nothing in
673 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,
674 75-17-27, 75-17-29 or 75-17-33 shall limit or restrict the manner
675 of contracting for such finance charge, whether by way of add-on,
676 discount or otherwise, so long as the annual percentage rate does
677 not exceed that permitted by law. If a greater finance charge
678 than that authorized by applicable law shall be stipulated for or
679 received in any case, all interest and finance charge shall be
680 forfeited, and may be recovered back, whether the contract be
681 executed or executory. If a finance charge be contracted for or
682 received that exceeds the maximum authorized by law by more than
683 one hundred percent (100%), the principal and all finance charges
684 shall be forfeited and any amount paid may be recovered by suit.
685 The provisions of this section, Section 75-17-1 and Sections
686 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
687 shall not restrict the extension of credit pursuant to any other
688 applicable law. A licensee under the Small Loan Regulatory Law
689 (Sections 75-67-101 through 75-67-135), and the Small Loan
690 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may
691 contract for and receive finance charges as authorized by Section
692 75-17-21, and the late payment charge as authorized by Section
693 75-17-27, regardless of the purpose for which the loan or other
694 extension of credit is made.

695 (3) (a) If in connection with a consumer loan any person
696 contracts for or receives, or participates in contracting for or
697 receiving, other charges in violation of any applicable statutory
698 or common law duty, or which are otherwise unlawful for any
699 reason:

700 (i) All such other charges plus interest accrued
701 thereon at the rate of eight percent (8%) per annum shall be



702 forfeited and may be recovered, whether the contract be executed
703 or executory;

704 (ii) If the other charges subject to forfeiture
705 under this section exceed Five Hundred Dollars (\$500.00), all
706 finance charges shall additionally be forfeited and may be
707 recovered;

708 (iii) If the other charges subject to forfeiture
709 under this section exceed One Thousand Five Hundred Dollars
710 (\$1,500.00), all principal shall additionally be forfeited and may
711 be recovered.

712 (b) If the other charges subject to forfeiture under
713 this section are found by the trier of fact and the court to have
714 been contracted for or received as a result of fraud, then an
715 award of three (3) times the other charges subject to forfeiture
716 or One Thousand Dollars (\$1,000.00), whichever is greater, plus
717 reasonable attorney's fees may be made in addition to the
718 penalties provided in this subsection (3).

719 (c) The right to recover the penalties provided in
720 subsection (3)(a)(ii) and (iii) shall accrue only after: (i)
721 written notice of the violation is given to the lender by
722 certified mail addressed to the lender's place of business as
723 shown in the credit transaction documents or such notice is given
724 by certified mail to the lender's agent for service of process;
725 and (ii) thirty (30) days have elapsed since receipt of such
726 notice by the lender and the violation has not been corrected by
727 refund or by credit to the consumer's remaining obligation of the
728 amount required by subsection (3)(a)(i). In the case of multiple
729 violations involving a common violation affecting more than one
730 hundred (100) consumers, the lender must notify the Commissioner
731 of Banking and Consumer Finance and correct the violation as to
732 each affected consumer within thirty (30) days after receipt of a
733 consumer notice, but the commissioner may extend the time for
734 correction for good reason. The penalties provided for in



735 subsection (3)(a)(ii) and (iii) shall not apply if it is proven by
736 a preponderance of the evidence that the violation was not
737 intentional and resulted from a bona fide error notwithstanding
738 the maintenance of procedures reasonably adapted to avoid any such
739 error, except that the lender may be required to correct the error
740 by refund or credit to the consumer's remaining obligation in the
741 amount required by subsection (3)(a)(i). Failure to refund or
742 give credit for an unlawful other charge within thirty (30) days
743 after receipt of a consumer notice or, in the case of multiple
744 violations, failure to give the commissioner the required notice
745 within the specified time, shall give rise to a rebuttable
746 presumption that the violation was not the result of a bona fide
747 error for purposes of this subsection (3). The penalties provided
748 for in subsection (3)(a)(ii) and (iii) shall not apply if the
749 lender discovers the problem itself or is notified of the problem
750 by the commissioner and within sixty (60) days after discovering
751 the violation, and prior to the receipt of written notice of the
752 violation from the consumer as provided herein, the lender
753 notifies the affected consumer of the violation and either refunds
754 or gives credit in the amount required by subsection (3)(a)(i).

755 (d) As used in this subsection (3), the term "consumer
756 loan" shall mean any loan or extension of credit offered or
757 extended primarily for personal, family or household purposes; and
758 the term "other charges" shall mean any amounts contracted for or
759 received by any person in connection with a consumer loan, other
760 than finance charges as defined in this section.

761 (4) The remedies and penalties provided in this section
762 shall be the exclusive remedies and penalties for contracting for
763 or receiving any finance charge in excess of that permitted by
764 applicable law or for contracting for or receiving, or
765 participating in contracting for or receiving, other charges in
766 violation of any applicable statutory or common law duty, or which
767 are otherwise unlawful.



768 **SECTION 17.** (1) The authority to bring an action against
769 any firearms or ammunition manufacturer, distributor or dealer
770 duly licensed under federal law on behalf of any governmental
771 entity created by or pursuant to an act of the Mississippi
772 Legislature or the Mississippi Constitution of 1890, or any
773 department, agency or authority thereof, for damages, abatement,
774 injunctive relief or any other relief or remedy resulting from or
775 relating to the lawful design, manufacture, distribution or sale
776 of firearms, firearm components, silencers, ammunition or
777 ammunition components to the public, shall be exclusively reserved
778 to the state. This section shall not prohibit a political
779 subdivision from bringing an action against a firearm or
780 ammunition manufacturer, distributor or dealer for breach of
781 contract or warranty as to firearms or ammunition purchased by the
782 political subdivision, or for injuries resulting from a firearm
783 malfunction due to defects in materials or workmanship.

784 (2) "Political subdivision" and "governmental entity" shall
785 have the meanings ascribed in Section 11-46-1.

786 **SECTION 18.** Sections 11-3-23 and 11-3-25, Mississippi Code
787 of 1972, which provide for the assessment of a penalty on the
788 appeal of certain judgments to the Supreme Court, are repealed.

789 **SECTION 19.** This act shall take effect and be in force from
790 and after January 1, 2003, and shall apply to all causes of action
791 filed on or after that date.

