

By: Representatives Watson,
Blackmon, Eads, Jennings,
Masterson, Pierce, Simpson, Smith
(39th), Stevens, Warren

To: Select Committee on
Civil Justice Reform

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 19

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE VENUE IN CIVIL ACTIONS GENERALLY; TO AMEND SECTION 11-1-62,
3 MISSISSIPPI CODE OF 1972, TO PROVIDE PROTECTION FOR PHARMACISTS
4 AND LICENSED PHARMACIES IN DRUG SUITS; TO PROVIDE IMMUNITY FOR
5 PROPERTY OWNERS IN PREMISES LIABILITY ACTIONS; TO AMEND SECTION
6 11-1-63, MISSISSIPPI CODE OF 1972, TO CLARIFY THE TERMS "SELLER,"
7 "PRESCRIBER," AND "DISPENSER" WITH RESPECT TO LIMITING LIABILITY
8 FOR DAMAGES ACTIONS AGAINST CERTAIN PRODUCT SELLERS; TO REQUIRE
9 THAT CERTAIN ACTIONS FOR DAMAGES AND OTHER RELIEF AGAINST FIREARMS
10 OR AMMUNITION MANUFACTURERS, DISTRIBUTORS OR SELLERS THEREOF MAY
11 ONLY BE BROUGHT BY THE STATE OR ITS POLITICAL SUBDIVISIONS; TO
12 PROVIDE AN ASSESSMENT FOR FILING FRIVOLOUS CLAIMS; TO PROHIBIT
13 ADVERTISING IN MISSISSIPPI TO SOLICIT PROSPECTIVE CLIENTS BY
14 ATTORNEYS NOT ADMITTED TO PRACTICE IN MISSISSIPPI; TO AMEND
15 SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE JOINT AND
16 SEVERAL LIABILITY IN CERTAIN CIVIL ACTIONS; TO PROVIDE THAT
17 CERTAIN INFORMATION REGARDING A DEFECTIVE PRODUCT, FINANCIAL
18 FRAUD, UNFAIR INSURANCE CLAIMS PRACTICES OR ENVIRONMENTAL HAZARD
19 SHALL BE PRESUMED TO BE PUBLIC INFORMATION; TO ALLOW SUCH
20 INFORMATION TO BE KEPT CONFIDENTIAL BY COURT ORDER; TO DEFINE
21 CERTAIN TERMS; TO AMEND SECTIONS 75-26-5, 75-26-11 AND 75-26-15,
22 MISSISSIPPI CODE OF 1972, TO CONFORM TO SUCH PROVISION THAT SUCH
23 INFORMATION IS PRESUMED TO BE PUBLIC; TO LIMIT THE LIABILITY OF
24 THE SPONSOR OR ADVERTISER OF AN EVENT IN THE CASE OF A CIVIL
25 ACTION ARISING OUT OF ACTIVITIES OCCURRING ON THE PREMISES OF THE
26 LOCATION WHERE THE EVENT IS HELD OR CONDUCTED, PROVIDED THAT THE
27 SPONSOR OR ADVERTISER DOES NOT EXERCISE CONTROL OVER ANY ASPECT OF
28 THE EVENT OTHER THAN ACTING AS SPONSOR OR ADVERTISER; TO DEFINE
29 THE TERMS "SPONSOR" AND "EVENT"; TO PROVIDE THAT THIS LIMITATION
30 OF LIABILITY SHALL NOT EXTEND TO WILLFUL ACTS OR GROSS NEGLIGENCE
31 ON THE PART OF A SPONSOR; TO CREATE NEW SECTION 11-7-30,
32 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CIVIL ACTIONS IN CIRCUIT
33 COURT SHALL NOT BE ASSIGNED TO A JUDGE UNTIL AT LEAST ONE
34 DEFENDANT HAS FILED A RESPONSIVE PLEADING; TO AMEND SECTION
35 11-1-65, MISSISSIPPI CODE OF 1972, TO IMPOSE A LIMITATION ON THE
36 AWARD OF PUNITIVE DAMAGES; TO PROHIBIT RECOVERY OF HEDONIC DAMAGES
37 IN CIVIL ACTIONS; TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF
38 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

43 11-11-3. (1) Civil actions of which the circuit court has
44 original jurisdiction shall be commenced in the county in which
45 the defendant resides or in the county where the cause of action



46 may occur or accrue and, if the defendant is a domestic
47 corporation, in the county in which said corporation is domiciled
48 or in the county where the cause of action may occur or accrue,
49 except where otherwise provided, and except actions of trespass on
50 land, ejectment and actions for the statutory penalty for cutting
51 and boxing trees and firing woods and actions for the actual value
52 of trees cut which shall be brought in the county where the land
53 or some part thereof is situated.

54 (2) Any action against a licensed physician, osteopath,
55 dentist, nurse, nurse practitioner, physician assistant,
56 psychologist, pharmacist, podiatrist, optometrist, chiropractor,
57 institution for the aged or infirm, hospital or licensed pharmacy,
58 including any legal entity which may be liable for their acts or
59 omissions, for malpractice, negligence, error, omission, mistake,
60 breach of standard of care or the unauthorized rendering of
61 professional services shall be brought in the county in which the
62 alleged act or omission occurred.

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

66 (4) If a civil action is brought in an improper county, such
67 action may be transferred to the proper county pursuant to Section
68 11-11-17.

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

72 11-1-62. In any civil action alleging damages caused by a
73 prescription drug that has been approved by the federal Food and
74 Drug Administration, a physician, optometrist, pharmacist,
75 licensed pharmacy, nurse practitioner or physician assistant may
76 not be sued unless the plaintiff pleads specific facts which, if
77 proven, amount to negligence on the part of the medical provider.
78 It is the intent of this section to immunize innocent medical



79 providers listed in this section who are not actively negligent
80 from forum-driven lawsuits.

81 **SECTION 3.** Section 11-1-63, Mississippi Code of 1972, is
82 amended as follows:

83 11-1-63. Notwithstanding the provisions of Section 11-1-62,
84 in any action for damages caused by a product except for
85 commercial damage to the product itself:

86 (a) The manufacturer, or seller, dispenser or
87 prescriber of the product shall not be liable if the claimant does
88 not prove by the preponderance of the evidence that at the time
89 the product left the control of the manufacturer, or seller,
90 dispenser or prescriber:

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

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

97 3. The product was designed in a defective
98 manner, or

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

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

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

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



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

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

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

139 (d) For purposes of this section:

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

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



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

146 (e) In any action alleging that a product is defective
147 pursuant to paragraph (a) of this section, the manufacturer,
148 seller, dispenser or prescriber shall not be liable if the
149 claimant (i) had knowledge of a condition of the product that was
150 inconsistent with his safety; (ii) appreciated the danger in the
151 condition; and (iii) deliberately and voluntarily chose to expose
152 himself to the danger in such a manner to register assent on the
153 continuance of the dangerous condition.

154 (f) In any action alleging that a product is defective
155 pursuant to paragraph (a)(i)2 of this section, the manufacturer,
156 seller, dispenser or prescriber shall not be liable if the danger
157 posed by the product is known or is open and obvious to the user
158 or consumer of the product, or should have been known or open and
159 obvious to the user or consumer of the product, taking into
160 account the characteristics of, and the ordinary knowledge common
161 to, the persons who ordinarily use or consume the product.

162 (g) In any action alleging that a product is defective
163 because of its design pursuant to paragraph (a)(i)3 of this
164 section, the manufacturer or product seller shall not be liable if
165 the claimant does not prove by the preponderance of the evidence
166 that at the time the product left the control of the manufacturer
167 or seller:

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

172 (ii) The product failed to function as expected
173 and there existed a feasible design alternative that would have to
174 a reasonable probability prevented the harm. A feasible design
175 alternative is a design that would have to a reasonable
176 probability prevented the harm without impairing the utility,



177 usefulness, practicality or desirability of the product to users
178 or consumers.

179 (h) (i) The manufacturer of a product who is found
180 liable for a defective product pursuant to paragraph (a) shall
181 indemnify a product seller, dispenser or prescriber for the costs
182 of litigation, any reasonable expenses, reasonable attorney's fees
183 and any damages awarded by the trier of fact unless the seller,
184 dispenser or prescriber exercised substantial control over that
185 aspect of the design, testing, manufacture, packaging or labeling
186 of the product that caused the harm for which recovery of damages
187 is sought; the seller, dispenser or prescriber altered or modified
188 the product, and the alteration or modification was a substantial
189 factor in causing the harm for which recovery of damages is
190 sought; the seller, dispenser or prescriber had actual knowledge
191 of the defective condition of the product at the time he supplied
192 same; or the seller, dispenser or prescriber made an express
193 factual representation about the aspect of the product which
194 caused the harm for which recovery of damages is sought.

195 (ii) Subparagraph (i) shall not apply unless the
196 seller has given prompt notice of the suit to the manufacturer
197 within ninety (90) days of the service of the complaint against
198 the seller. The provision of this subparagraph shall not conflict
199 with the Mississippi Rules of Civil Procedure.

200 (i) With respect to manufacturers of drugs or medical
201 devices, an agent or employee of such manufacturer who directly
202 participates in or authorizes the commission of a tort, shall be
203 subject to liability for any individual act of negligence
204 committed by said agent or employee related to said drugs or
205 medical devices within the course and scope of employment.

206 (j) It is the intent of this section to immunize
207 innocent medical providers including pharmacists and licensed
208 pharmacies who are not actively negligent from forum-driven
209 lawsuits.



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

213 SECTION 4. (1) The authority to bring an action against any
214 firearms or ammunition manufacturer, distributor or dealer duly
215 licensed under federal law on behalf of any governmental entity
216 created by or pursuant to an act of the Mississippi Legislature or
217 the Mississippi Constitution of 1890, or any department, agency or
218 authority thereof, for damages, abatement, injunctive relief or
219 any other relief or remedy resulting from or relating to the
220 lawful design, manufacture, distribution or sale of firearms,
221 firearm components, silencers, ammunition or ammunition components
222 to the public, shall be exclusively reserved to the state. This
223 section shall not prohibit a political subdivision from bringing
224 an action against a firearm or ammunition manufacturer,
225 distributor or dealer for breach of contract or warranty as to
226 firearms or ammunition purchased by the political subdivision, or
227 for injuries resulting from a firearm malfunction due to defects
228 in materials or workmanship.

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

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

233 SECTION 5. No owner, occupant, lessee or managing agent of
234 property shall be civilly liable for the criminal acts of a third
235 party, unless such owner, occupant, lessee or managing agent knew
236 or, with the exercise of reasonable diligence, should have known
237 of the risk of criminal conduct on or around such property and the
238 failure to take reasonable measures to deter such foreseeable
239 conduct is a proximate cause of damages to an individual or
240 entity.

241 SECTION 6. If a party files any pleading in a civil action,
242 which in the opinion of the court is frivolous, the court may



243 impose an assessment of not more than One Thousand Dollars
244 (\$1,000.00) against each attorney of record for the party filing
245 the pleading. Such assessment shall be in addition to any other
246 assessments, penalties or sanctions authorized by law or
247 otherwise. The proceeds of any assessment imposed under this
248 section shall be paid to the Mississippi Volunteer Lawyers
249 Project, Inc.

250 **SECTION 7.** The Legislature recognizes that attorneys should
251 be licensed by the Mississippi Bar before engaging in any
252 solicitation of clients in this state. Such licensing of
253 attorneys protects the people of Mississippi in that the
254 Mississippi Bar has direct jurisdiction over attorneys licensed by
255 it. The Bar can act against such licensed attorneys in the event
256 that such licensed attorneys commit violations of Mississippi law,
257 court rules and rules of ethics for attorneys. The Legislature
258 finds that this section is necessary for the protection of the
259 people of Mississippi. An attorney who is not admitted to the
260 Mississippi Bar shall not advertise his legal services in this
261 state for the purpose of soliciting prospective clients for the
262 commencing of any civil action in this state, or for the purpose
263 of soliciting clients for any civil action already commenced or
264 pending in this state, unless the attorney who is not a member of
265 the Mississippi Bar has associated an attorney who (a) is a member
266 of the Mississippi Bar; and (b) will be associated and actively
267 working on substantial aspects in any civil action filed on behalf
268 of a client solicited as a result of the advertisement. A law
269 firm composed of both attorneys who are members of the Mississippi
270 Bar and attorneys who are not members of the Mississippi Bar may
271 advertise in this state if a majority of the members of the firm
272 are members of the Mississippi Bar. For purposes of this section,
273 a listing in the residential or business section of the white
274 pages of a telephone book shall not be an advertisement.



275 **SECTION 8.** Section 85-5-7, Mississippi Code of 1972, as
276 amended by House Bill No. 2, Third Extraordinary Session 2002, is
277 amended as follows:

278 85-5-7. (1) As used in this section "fault" means an act or
279 omission of a person which is a proximate cause of injury or death
280 to another person or persons, damages to property, tangible or
281 intangible, or economic injury, including, but not limited to,
282 negligence, malpractice, strict liability, absolute liability or
283 failure to warn. "Fault" shall not include any tort which results
284 from an act or omission committed with a specific wrongful intent.

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

291 (3) Except as otherwise provided in subsections (2), (6) and
292 (8) of this section, in any civil action based on fault, the
293 liability for damages caused by two (2) or more persons shall be
294 several only, and not joint and several and a joint tort-feasor
295 shall be liable only for the amount of damages allocated to him in
296 direct proportion to his percentage of fault. In assessing
297 percentages of fault an employer and the employer's employee or a
298 principal and the principal's agent shall be considered as one (1)
299 defendant when the liability of such employer or principal has
300 been caused by the wrongful or negligent act or omission of the
301 employee or agent.

302 (4) Any defendant held jointly liable under this section
303 shall have a right of contribution against fellow joint
304 tort-feasors. A defendant shall be held responsible for
305 contribution to other joint tort-feasors only for the percentage
306 of fault assessed to such defendant.



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

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

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

319 (8) Except as provided in subsection (6) of this section, in
320 any action involving joint tort-feasors, the trier of fact shall
321 determine the percentage of fault for each joint tort-feasor,
322 including named parties and absent tort-feasors, without regard to
323 whether the joint tort-feasor is immune from damages. For
324 noneconomic damages, a defendant's liability shall be several
325 only. For economic damages, for any defendant whose fault is
326 determined to be less than thirty percent (30%), liability shall
327 be several only and for any defendant whose fault is determined to
328 be thirty percent (30%) or more, liability shall be joint and
329 several only to the extent necessary for the person suffering
330 injury, death or loss to recover fifty percent (50%) of his
331 recoverable damages. Fault allocated under this subsection to an
332 immune tort-feasor or a tort-feasor whose liability is limited by
333 law shall not be reallocated to any other tort-feasor.

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

337 Notwithstanding any other provisions of law to the contrary,
338 the doctrine of joint and several liability shall not be limited
339 as to tortious conduct by a defendant which injures the health or



340 safety of Mississippi residents by manufacture or distribution of
341 a drug or defective or dangerous substance causing injury to
342 Mississippi residents or which constitutes fraud.

343 **SECTION 9.** (1) Notwithstanding any other provision of law,
344 in an action based upon injury, wrongful death, or financial loss
345 allegedly caused by a defective product, financial fraud, unfair
346 insurance claims practice or environmental hazard, other than any
347 action classified by a court as a mass tort action, information
348 concerning the defective product, financial fraud, unfair
349 insurance claims practice or environmental hazard, which is
350 contained in a settlement agreement pertaining to the action and
351 not filed with the court shall be presumed to be public
352 information and may not be kept confidential pursuant to agreement
353 of the parties. This information may be kept confidential for a
354 period that the court deems appropriate only pursuant to a court
355 order.

356 (2) As used in this section:

357 (a) "Defective product" means a product that may be
358 defective because of a defect in manufacturing or design or a
359 failure to adequately warn the consumer of a hazard involved in
360 the foreseeable use of the product, where the defect may result in
361 personal injury to one or more persons.

362 (b) "Financial fraud" means any fraudulent insurance
363 practice or any fraudulent plan or scheme to sell a publicly
364 offered investment product without full disclosure of the risks
365 associated with the purchase of the product, where the plan or
366 scheme may cause or has caused financial loss.

367 (c) "Environmental hazard" means a release or
368 threatened release of a hazardous substance that poses a threat to
369 public health or safety involving present or future danger of
370 death, bodily injury or health disability to human beings exposed
371 to a hazardous substance release or threatened release.



372 **SECTION 10.** Section 75-26-5, Mississippi Code of 1972, is
373 amended as follows:

374 75-26-5. (1) Except as provided in Section 9 of House Bill
375 No. 19, Third Extraordinary Session 2002, actual or threatened
376 misappropriation may be enjoined. Upon application to the court,
377 an injunction shall be terminated when the trade secret has ceased
378 to exist, but the injunction may be continued for an additional
379 reasonable period of time in order to eliminate commercial
380 advantage that otherwise would be derived from the
381 misappropriation.

382 (2) In exceptional circumstances, an injunction may
383 condition future use upon payment of a reasonable royalty for no
384 longer than the period of time for which use could have been
385 prohibited. Exceptional circumstances include, but are not
386 limited to, a material and prejudicial change of position prior to
387 acquiring knowledge or reason to know of misappropriation that
388 renders a prohibitive injunction inequitable.

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

391 **SECTION 11.** Section 75-26-11, Mississippi Code of 1972, is
392 amended as follows:

393 75-26-11. Except as provided in Section 9 of House
394 Bill No. 19, Third Extraordinary Session 2002, in an action under
395 this chapter, a court shall preserve the secrecy of an alleged
396 trade secret by reasonable means, which may include granting
397 protective orders in connection with discovery proceedings,
398 holding in-camera hearings, sealing the records of the action and
399 ordering any person involved in the litigation not to disclose an
400 alleged trade secret without prior court approval.

401 **SECTION 12.** Section 75-26-15, Mississippi Code of 1972, is
402 amended as follows:

403 75-26-15. (1) Except as provided in subsection (2), this
404 chapter displaces conflicting tort, restitutionary and other law



405 of this state providing civil remedies for misappropriation of a
406 trade secret.

407 (2) This chapter does not affect:

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

410 (b) Other civil remedies that are not based upon
411 misappropriation of a trade secret; or

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

414 (d) The provisions of Section 9 of House Bill No. 19,
415 Third Extraordinary Session 2002.

416 **SECTION 13.** For purposes of Sections 13 and 14 of this act,
417 the following words and phrases shall have the meanings ascribed
418 in this section unless the context clearly indicates otherwise:

419 (a) "Sponsor or advertiser" means any person,
420 corporation or legal entity which, solely for charitable purposes,
421 (i) sells, rents, manufactures or provides products, equipment or
422 promotional materials, or (ii) donates or contributes money or
423 fees, in order that an event may be held or conducted.

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

427 **SECTION 14.** (1) Any sponsor or advertiser of an event,
428 which does not exercise control over any aspect of the event other
429 than acting as a sponsor or advertiser, shall be immune from
430 liability for any civil action arising out of activities occurring
431 on the premises of the location where the event is held or
432 conducted.

433 (2) No sponsor or advertiser shall be liable to a person who
434 may lawfully consume any intoxicating beverage for any injury
435 suffered by such person, or by any other person, off the premises
436 of the event, including wrongful death and property damage,
437 because of the intoxication of the person to whom the intoxicating



438 beverages were served or furnished when on the premises of the
439 event.

440 (3) This section shall not extend immunity to willful acts
441 or gross negligence on the part of a sponsor or advertiser;
442 however, the sponsor or advertiser shall not be considered to be a
443 part of a joint venture or the principal of an agent, with regard
444 to any other person, corporation or legal entity which is
445 participating in the event in any capacity other than that of
446 sponsor or advertiser.

447 **SECTION 15.** The following shall be codified as Section
448 11-7-30, Mississippi Code of 1972:

449 11-7-30. Civil actions in circuit court shall not be
450 assigned to a judge until at least one (1) defendant has filed a
451 responsive pleading.

452 **SECTION 16.** Section 11-1-65, Mississippi Code of 1972, is
453 amended as follows:

454 11-1-65. (1) In any action in which punitive damages are
455 sought:

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

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

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

469 (d) The court shall determine whether the issue of
470 punitive damages may be submitted to the trier of fact; and, if



471 so, the trier of fact shall determine whether to award punitive
472 damages and in what amount.

473 (e) In all cases involving an award of punitive
474 damages, the fact finder, in determining the amount of punitive
475 damages, shall consider, to the extent relevant, the following:
476 the defendant's financial condition and net worth; the nature and
477 reprehensibility of the defendant's wrongdoing, for example, the
478 impact of the defendant's conduct on the plaintiff, or the
479 relationship of the defendant to the plaintiff; the defendant's
480 awareness of the amount of harm being caused and the defendant's
481 motivation in causing such harm; the duration of the defendant's
482 misconduct and whether the defendant attempted to conceal such
483 misconduct; and any other circumstances shown by the evidence that
484 bear on determining a proper amount of punitive damages. The
485 trier of fact shall be instructed that the primary purpose of
486 punitive damages is to punish the wrongdoer and deter similar
487 misconduct in the future by the defendant and others while the
488 purpose of compensatory damages is to make the plaintiff whole.

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

494 (ii) In determining whether the award is
495 excessive, the court shall take into consideration the following
496 factors:

497 1. Whether there is a reasonable relationship
498 between the punitive damage award and the harm likely to result
499 from the defendant's conduct as well as the harm that actually
500 occurred;

501 2. The degree of reprehensibility of the
502 defendant's conduct, the duration of that conduct, the defendant's



503 awareness, any concealment, and the existence and frequency of
504 similar past conduct;

505 3. The financial condition and net worth of
506 the defendant; and

507 4. In mitigation, the imposition of criminal
508 sanctions on the defendant for its conduct and the existence of
509 other civil awards against the defendant for the same conduct.

510 (2) The seller of a product other than the manufacturer
511 shall not be liable for punitive damages unless the seller
512 exercised substantial control over that aspect of the design,
513 testing, manufacture, packaging or labeling of the product that
514 caused the harm for which recovery of damages is sought; the
515 seller altered or modified the product, and the alteration or
516 modification was a substantial factor in causing the harm for
517 which recovery of damages is sought; the seller had actual
518 knowledge of the defective condition of the product at the time he
519 supplied same; or the seller made an express factual
520 representation about the aspect of the product which caused the
521 harm for which recovery of damages is sought.

522 (3) In a civil action against a business where an
523 entitlement to punitive damages shall have been established under
524 applicable laws, no award of punitive damages shall exceed four
525 percent (4%) of the net worth of the business, as such amount
526 shall be determined in accordance with Generally Accepted
527 Accounting Principles, unless the finder of fact and court find by
528 clear and convincing evidence that the defendant acted with
529 criminal intent to cause serious physical bodily injury. This
530 restriction shall not be disclosed to the trier of fact, but shall
531 be applied by the court to any punitive damages verdict. The
532 limitations in damages to civil actions seeking punitive damages
533 as provided for in this subsection shall not apply to civil
534 actions seeking punitive damages for breach of fiduciary duty in
535 actions against businesses while engaged in core business



536 activities of money management, providing legal or accounting
537 services, stock or bond brokerage, management of retirement
538 accounts or for those engaged in conduct constituting a crime or
539 for those engaged in conduct which constitutes abuse, exploitation
540 or willful neglect of a vulnerable adult, as those terms are
541 defined in the Mississippi Vulnerable Adult Act.

542 (4) Nothing herein shall be construed as creating a right to
543 an award of punitive damages or to limit the duty of the court, or
544 the appellate courts, to scrutinize all punitive damage awards,
545 ensure that all punitive damage awards comply with applicable
546 procedural, evidentiary and constitutional requirements, and to
547 order additur or remittitur where appropriate.

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

550 (a) Contracts;

551 (b) Libel and slander; or

552 (c) Causes of action for persons and property arising
553 out of asbestos.

554 **SECTION 17.** (1) In any civil action there may be a recovery
555 for pain and suffering and loss of enjoyment of life. However,
556 there shall be no recovery for loss of enjoyment of life as a
557 separate element of damages apart from pain and suffering damages,
558 and there shall be no instruction given to the jury which
559 separates loss of enjoyment of life from pain and suffering. The
560 determination of the existence and extent of recovery for pain and
561 suffering and loss of enjoyment of life shall be a question for
562 the finder of fact, subject to appellate review, and shall not be
563 made the subject of expert testimony.

564 (2) In any wrongful death action, there shall be no recovery
565 for loss of enjoyment of life caused by death.

566 **SECTION 18.** Section 11-7-13, Mississippi Code of 1972, is
567 amended as follows:



568 11-7-13. Whenever the death of any person shall be caused by
569 any real, wrongful or negligent act or omission, or by such unsafe
570 machinery, way or appliances as would, if death had not ensued,
571 have entitled the party injured or damaged thereby to maintain an
572 action and recover damages in respect thereof, or whenever the
573 death of any person shall be caused by the breach of any warranty,
574 express or implied, of the purity or fitness of any foods, drugs,
575 medicines, beverages, tobacco or any and all other articles or
576 commodities intended for human consumption, as would, had the
577 death not ensued, have entitled the person injured or made ill or
578 damaged thereby, to maintain an action and recover damages in
579 respect thereof, and such deceased person shall have left a widow
580 or children or both, or husband or father or mother, or sister, or
581 brother, the person or corporation, or both that would have been
582 liable if death had not ensued, and the representatives of such
583 person shall be liable for damages, notwithstanding the death, and
584 the fact that death was instantaneous shall in no case affect the
585 right of recovery. The action for such damages may be brought in
586 the name of the personal representative of the deceased person for
587 the benefit of all persons entitled under the law to recover, or
588 by widow for the death of her husband, or by the husband for the
589 death of the wife, or by the parent for the death of a child, or
590 in the name of a child, or in the name of a child for the death of
591 a parent, or by a brother for the death of a sister, or by a
592 sister for the death of a brother, or by a sister for the death of
593 a sister, or a brother for the death of a brother, or all parties
594 interested may join in the suit, and there shall be but one (1)
595 suit for the same death which shall ensue for the benefit of all
596 parties concerned, but the determination of such suit shall not
597 bar another action unless it be decided on its merits. Except as
598 otherwise provided in Section 17 of this act, in such action the
599 party or parties suing shall recover such damages allowable by law
600 as the jury may determine to be just, taking into consideration



601 all the damages of every kind to the decedent and all damages of
602 every kind to any and all parties interested in the suit.

603 This section shall apply to all personal injuries of servants
604 and employees received in the service or business of the master or
605 employer, where such injuries result in death, and to all deaths
606 caused by breach of warranty, either express or implied, of the
607 purity and fitness of foods, drugs, medicines, beverages, tobacco
608 or other articles or commodities intended for human consumption.

609 Any person entitled to bring a wrongful death action may
610 assert or maintain a claim for any breach of expressed warranty or
611 for any breach of implied warranty. A wrongful death action may
612 be maintained or asserted for strict liability in tort or for any
613 cause of action known to the law for which any person,
614 corporation, legal representative or entity would be liable for
615 damages if death had not ensued.

616 In an action brought pursuant to the provisions of this
617 section by the widow, husband, child, father, mother, sister or
618 brother of the deceased, or by all interested parties, such party
619 or parties may recover as damages property damages and funeral,
620 medical or other related expenses incurred by or for the deceased
621 as a result of such wrongful or negligent act or omission or
622 breach of warranty, whether an estate has been opened or not. Any
623 amount, but only such an amount, as may be recovered for property
624 damage, funeral, medical or other related expenses shall be
625 subject only to the payment of the debts or liabilities of the
626 deceased for property damages, funeral, medical or other related
627 expenses. All other damages recovered under the provisions of
628 this section shall not be subject to the payment of the debts or
629 liabilities of the deceased, except as hereinafter provided, and
630 such damages shall be distributed as follows:

631 Damages for the injury and death of a married man shall be
632 equally distributed to his wife and children, and if he has no
633 children all shall go to his wife; damages for the injury and



634 death of a married woman shall be equally distributed to the
635 husband and children, and if she has no children all shall go to
636 the husband; and if the deceased has no husband or wife, the
637 damages shall be equally distributed to the children; if the
638 deceased has no husband, nor wife, nor children, the damages shall
639 be distributed equally to the father, mother, brothers and
640 sisters, or such of them as the deceased may have living at his or
641 her death. If the deceased have neither husband, nor wife, nor
642 children, nor father, nor mother, nor sister, nor brother, then
643 the damages shall go to the legal representative, subject to debts
644 and general distribution, and the fact that the deceased was
645 instantly killed shall not affect the right of the legal
646 representative to recover. All references in this section to
647 children shall include descendants of a deceased child, such
648 descendants to take the share of the deceased child by
649 representation. There shall not be, in any case, a distinction
650 between the kindred of the whole and half blood of equal degree.
651 The provisions of this section shall apply to illegitimate
652 children on account of the death of the mother and to the mother
653 on account of the death of an illegitimate child or children, and
654 they shall have all the benefits, rights and remedies conferred by
655 this section on legitimates. The provisions of this section shall
656 apply to illegitimate children on account of the death of the
657 natural father and to the natural father on account of the death
658 of the illegitimate child or children, and they shall have all the
659 benefits, rights and remedies conferred by this section on
660 legitimates, if the survivor has or establishes the right to
661 inherit from the deceased under Section 91-1-15.

662 Any rights which a blood parent or parents may have under
663 this section are hereby conferred upon and vested in an adopting
664 parent or adopting parents surviving their deceased adopted child,
665 just as if the child were theirs by the full blood and had been
666 born to the adopting parents in lawful wedlock.



667 **SECTION 19.** If any provision of this act is held by a court
668 to be invalid, such invalidity shall not affect the remaining
669 provisions of this act, and to this end the provisions of this act
670 are declared severable.

671 **SECTION 20.** The provisions of Section 16 of this act shall
672 take effect and be in force from and after January 1, 2003, and
673 shall apply only to causes of action occurring on or after that
674 date. The provisions of all other sections of this act shall take
675 effect and be in force from and after passage of this act, and
676 shall apply only to causes of action occurring on or after that
677 date.

