

By: Representative Watson

To: Select Committee on  
Civil Justice Reform

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 which injures the health or safety of



340 Mississippi residents by manufacture or distribution of a drug or  
341 defective or dangerous substance causing injury to Mississippi  
342 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 Senate Bill  
375 No. 2016, 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 Senate  
394 Bill No. 2016, Third Extraordinary Session 2002, in an action  
395 under this chapter, a court shall preserve the secrecy of an  
396 alleged trade secret by reasonable means, which may include  
397 granting protective orders in connection with discovery  
398 proceedings, holding in-camera hearings, sealing the records of  
399 the action and ordering any person involved in the litigation not  
400 to disclose an 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 Senate Bill No.  
415 2016, 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 or  
535 for action 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.

