

By: Representatives Watson,  
Blackmon, Eads, Jennings,  
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(39th), Stevens, Warren

To: Select Committee on  
Civil Justice Reform

HOUSE BILL NO. 19  
(As Passed the House)

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 A LIMITATION ON NONECONOMIC DAMAGES IN ACTIONS AGAINST  
13 PARAMEDICS OR EMERGENCY MEDICAL TECHNICIANS; TO PROVIDE AN  
14 ASSESSMENT FOR FILING FRIVOLOUS CLAIMS; TO PROHIBIT ADVERTISING IN  
15 MISSISSIPPI TO SOLICIT PROSPECTIVE CLIENTS BY ATTORNEYS NOT  
16 ADMITTED TO PRACTICE IN MISSISSIPPI; TO AMEND SECTION 85-5-7,  
17 MISSISSIPPI CODE OF 1972, TO REVISE JOINT AND SEVERAL LIABILITY IN  
18 CERTAIN CIVIL ACTIONS; TO PROVIDE FOR AN EVIDENTIARY HEARING TO  
19 DETERMINE IF A SELLER OF A PRODUCT IS AN INNOCENT SELLER; TO  
20 PROVIDE THAT CERTAIN INFORMATION REGARDING A DEFECTIVE PRODUCT,  
21 FINANCIAL FRAUD, UNFAIR INSURANCE CLAIMS PRACTICES OR  
22 ENVIRONMENTAL HAZARD SHALL BE PRESUMED TO BE PUBLIC INFORMATION;  
23 TO ALLOW SUCH INFORMATION TO BE KEPT CONFIDENTIAL BY COURT ORDER;  
24 TO DEFINE CERTAIN TERMS; TO AMEND SECTIONS 75-26-5, 75-26-11 AND  
25 75-26-15, MISSISSIPPI CODE OF 1972, TO CONFORM TO SUCH PROVISION  
26 THAT SUCH INFORMATION IS PRESUMED TO BE PUBLIC; TO LIMIT THE  
27 LIABILITY OF THE SPONSOR OR ADVERTISER OF AN EVENT IN THE CASE OF  
28 A CIVIL ACTION ARISING OUT OF ACTIVITIES OCCURRING ON THE PREMISES  
29 OF THE LOCATION WHERE THE EVENT IS HELD OR CONDUCTED, PROVIDED  
30 THAT THE SPONSOR OR ADVERTISER DOES NOT EXERCISE CONTROL OVER ANY  
31 ASPECT OF THE EVENT OTHER THAN ACTING AS SPONSOR OR ADVERTISER; TO  
32 DEFINE THE TERMS "SPONSOR" AND "EVENT"; TO PROVIDE THAT THIS  
33 LIMITATION OF LIABILITY SHALL NOT EXTEND TO WILLFUL ACTS OR GROSS  
34 NEGLIGENCE ON THE PART OF A SPONSOR; TO CREATE NEW SECTION  
35 11-7-30, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CIVIL ACTIONS  
36 IN CIRCUIT COURT SHALL NOT BE ASSIGNED TO A JUDGE UNTIL AT LEAST  
37 ONE DEFENDANT HAS FILED A RESPONSIVE PLEADING; TO AMEND SECTION  
38 11-1-65, MISSISSIPPI CODE OF 1972, TO IMPOSE A LIMITATION ON THE  
39 AWARD OF PUNITIVE DAMAGES; TO PROHIBIT RECOVERY OF HEDONIC DAMAGES  
40 IN CIVIL ACTIONS; TO AMEND SECTION 11-7-13, MISSISSIPPI CODE OF  
41 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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



46 11-11-3. (1) Civil actions of which the circuit court has  
47 original jurisdiction shall be commenced in the county in which  
48 the defendant resides or in the county where the cause of action  
49 may occur or accrue and, if the defendant is a domestic  
50 corporation, in the county in which said corporation is domiciled  
51 or in the county where the cause of action may occur or accrue,  
52 except where otherwise provided, and except actions of trespass on  
53 land, ejectment and actions for the statutory penalty for cutting  
54 and boxing trees and firing woods and actions for the actual value  
55 of trees cut which shall be brought in the county where the land  
56 or some part thereof is situated.

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

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

69 (4) If a civil action is brought in an improper county, such  
70 action may be transferred to the proper county pursuant to Section  
71 11-11-17.

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

75 11-1-62. In any civil action alleging damages caused by a  
76 prescription drug that has been approved by the federal Food and  
77 Drug Administration, a physician, optometrist, pharmacist,  
78 licensed pharmacy, nurse practitioner or physician assistant may



79 not be sued unless the plaintiff pleads specific facts which, if  
80 proven, amount to negligence on the part of the medical provider.  
81 It is the intent of this section to immunize innocent medical  
82 providers listed in this section who are not actively negligent  
83 from forum-driven lawsuits.

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

86 11-1-63. (1) Notwithstanding the provisions of Section  
87 11-1-62, in any action for damages caused by a product except for  
88 commercial damage to the product itself:

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

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

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

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

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

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

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



111           (b) A product is not defective in design or formulation  
112 if the harm for which the claimant seeks to recover compensatory  
113 damages was caused by an inherent characteristic of the product  
114 which is a generic aspect of the product that cannot be eliminated  
115 without substantially compromising the product's usefulness or  
116 desirability and which is recognized by the ordinary person with  
117 the ordinary knowledge common to the community.

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

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

142           (d) For purposes of this section:



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

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

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

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

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

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

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



175                   (ii) The product failed to function as expected  
176 and there existed a feasible design alternative that would have to  
177 a reasonable probability prevented the harm. A feasible design  
178 alternative is a design that would have to a reasonable  
179 probability prevented the harm without impairing the utility,  
180 usefulness, practicality or desirability of the product to users  
181 or consumers.

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

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

203                   (i) With respect to manufacturers of drugs or medical  
204 devices, an agent or employee of such manufacturer who directly  
205 participates in or authorizes the commission of a tort, shall be  
206 subject to liability for any individual act of negligence



207 committed by said agent or employee related to said drugs or  
208 medical devices within the course and scope of employment.

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

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

216 (2) In a products liability action, an evidentiary hearing  
217 may be requested by a product seller within ninety (90) days of  
218 the filing of the answer to determine if the seller of the product  
219 is an innocent seller. The product seller shall not be liable for  
220 any latent defect if the seller is a mere conduit who purchases  
221 the product from a reputable manufacturer and shall be dismissed  
222 from the action.

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



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

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

243 **SECTION 5.** No owner, occupant, lessee or managing agent of  
244 property shall be civilly liable for the criminal acts of a third  
245 party, unless such owner, occupant, lessee or managing agent knew  
246 or, with the exercise of reasonable diligence, should have known  
247 of the risk of criminal conduct on or around such property and the  
248 failure to take reasonable measures to deter such foreseeable  
249 conduct is a proximate cause of damages to an individual or  
250 entity.

251 **SECTION 6.** No judgment against any paramedic or emergency  
252 medical technician (E.M.T.) who has rendered emergency services to  
253 any person shall be subject to any award for noneconomic damages  
254 greater than Five Hundred Thousand Dollars (\$500,000.00), unless  
255 the injuries sustained by the claimant were the result of  
256 intentional acts or gross negligence on the part of the paramedic  
257 or emergency medical technician (E.M.T.).

258 **SECTION 7.** If a party files any pleading in a civil action,  
259 which in the opinion of the court is frivolous, the court may  
260 impose an assessment of not more than One Thousand Dollars  
261 (\$1,000.00) against each attorney of record for the party filing  
262 the pleading. Such assessment shall be in addition to any other  
263 assessments, penalties or sanctions authorized by law or  
264 otherwise. The proceeds of any assessment imposed under this  
265 section shall be paid to the Mississippi Volunteer Lawyers  
266 Project, Inc.

267 **SECTION 8.** The Legislature recognizes that attorneys should  
268 be licensed by the Mississippi Bar before engaging in any  
269 solicitation of clients in this state. Such licensing of  
270 attorneys protects the people of Mississippi in that the  
271 Mississippi Bar has direct jurisdiction over attorneys licensed by





272 it. The Bar can act against such licensed attorneys in the event  
273 that such licensed attorneys commit violations of Mississippi law,  
274 court rules and rules of ethics for attorneys. The Legislature  
275 finds that this section is necessary for the protection of the  
276 people of Mississippi. An attorney who is not admitted to the  
277 Mississippi Bar shall not advertise his legal services in this  
278 state for the purpose of soliciting prospective clients for the  
279 commencing of any civil action in this state, or for the purpose  
280 of soliciting clients for any civil action already commenced or  
281 pending in this state, unless the attorney who is not a member of  
282 the Mississippi Bar has associated an attorney who (a) is a member  
283 of the Mississippi Bar; and (b) will be associated and actively  
284 working on substantial aspects in any civil action filed on behalf  
285 of a client solicited as a result of the advertisement. A law  
286 firm composed of both attorneys who are members of the Mississippi  
287 Bar and attorneys who are not members of the Mississippi Bar may  
288 advertise in this state if a majority of the members of the firm  
289 are members of the Mississippi Bar. For purposes of this section,  
290 a listing in the residential or business section of the white  
291 pages of a telephone book shall not be an advertisement.

292 **SECTION 9.** Section 85-5-7, Mississippi Code of 1972, as  
293 amended by House Bill No. 2, Third Extraordinary Session 2002, is  
294 amended as follows:

295 85-5-7. (1) As used in this section "fault" means an act or  
296 omission of a person which is a proximate cause of injury or death  
297 to another person or persons, damages to property, tangible or  
298 intangible, or economic injury, including, but not limited to,  
299 negligence, malpractice, strict liability, absolute liability or  
300 failure to warn. "Fault" shall not include any tort which results  
301 from an act or omission committed with a specific wrongful intent.

302 (2) Except as may be otherwise provided in subsections (6)  
303 and (8) of this section, in any civil action based on fault, the  
304 liability for damages caused by two (2) or more persons shall be



305 joint and several only to the extent necessary for the person  
306 suffering injury, death or loss to recover fifty percent (50%) of  
307 his recoverable damages.

308 (3) Except as otherwise provided in subsections (2), (6) and  
309 (8) of this section, in any civil action based on fault, the  
310 liability for damages caused by two (2) or more persons shall be  
311 several only, and not joint and several and a joint tort-feasor  
312 shall be liable only for the amount of damages allocated to him in  
313 direct proportion to his percentage of fault. In assessing  
314 percentages of fault an employer and the employer's employee or a  
315 principal and the principal's agent shall be considered as one (1)  
316 defendant when the liability of such employer or principal has  
317 been caused by the wrongful or negligent act or omission of the  
318 employee or agent.

319 (4) Any defendant held jointly liable under this section  
320 shall have a right of contribution against fellow joint  
321 tort-feasors. A defendant shall be held responsible for  
322 contribution to other joint tort-feasors only for the percentage  
323 of fault assessed to such defendant.

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

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

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

336 (8) Except as provided in subsection (6) of this section, in  
337 any action involving joint tort-feasors, the trier of fact shall



338 determine the percentage of fault for each joint tort-feasor,  
339 including named parties and absent tort-feasors, without regard to  
340 whether the joint tort-feasor is immune from damages. For  
341 noneconomic damages, a defendant's liability shall be several  
342 only. For economic damages, for any defendant whose fault is  
343 determined to be less than thirty percent (30%), liability shall  
344 be several only and for any defendant whose fault is determined to  
345 be thirty percent (30%) or more, liability shall be joint and  
346 several only to the extent necessary for the person suffering  
347 injury, death or loss to recover fifty percent (50%) of his  
348 recoverable damages. Fault allocated under this subsection to an  
349 immune tort-feasor or a tort-feasor whose liability is limited by  
350 law shall not be reallocated to any other tort-feasor.

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

354 Notwithstanding any other provisions of law to the contrary,  
355 the doctrine of joint and several liability shall not be limited  
356 as to tortious conduct by a defendant which injures the health or  
357 safety of Mississippi residents by manufacture or distribution of  
358 a drug or defective or dangerous substance causing injury to  
359 Mississippi residents or which constitutes fraud.

360 **SECTION 10.** (1) Notwithstanding any other provision of law,  
361 in an action based upon injury, wrongful death, or financial loss  
362 allegedly caused by a defective product, financial fraud, unfair  
363 insurance claims practice or environmental hazard, other than any  
364 action classified by a court as a mass tort action, information  
365 concerning the defective product, financial fraud, unfair  
366 insurance claims practice or environmental hazard, which is  
367 contained in a settlement agreement pertaining to the action and  
368 not filed with the court shall be presumed to be public  
369 information and may not be kept confidential pursuant to agreement  
370 of the parties. This information may be kept confidential for a



371 period that the court deems appropriate only pursuant to a court  
372 order.

373 (2) As used in this section:

374 (a) "Defective product" means a product that may be  
375 defective because of a defect in manufacturing or design or a  
376 failure to adequately warn the consumer of a hazard involved in  
377 the foreseeable use of the product, where the defect may result in  
378 personal injury to one or more persons.

379 (b) "Financial fraud" means any fraudulent insurance  
380 practice or any fraudulent plan or scheme to sell a publicly  
381 offered investment product without full disclosure of the risks  
382 associated with the purchase of the product, where the plan or  
383 scheme may cause or has caused financial loss.

384 (c) "Environmental hazard" means a release or  
385 threatened release of a hazardous substance that poses a threat to  
386 public health or safety involving present or future danger of  
387 death, bodily injury or health disability to human beings exposed  
388 to a hazardous substance release or threatened release.

389 **SECTION 11.** Section 75-26-5, Mississippi Code of 1972, is  
390 amended as follows:

391 75-26-5. (1) Except as provided in Section 9 of House Bill  
392 No. 19, Third Extraordinary Session 2002, actual or threatened  
393 misappropriation may be enjoined. Upon application to the court,  
394 an injunction shall be terminated when the trade secret has ceased  
395 to exist, but the injunction may be continued for an additional  
396 reasonable period of time in order to eliminate commercial  
397 advantage that otherwise would be derived from the  
398 misappropriation.

399 (2) In exceptional circumstances, an injunction may  
400 condition future use upon payment of a reasonable royalty for no  
401 longer than the period of time for which use could have been  
402 prohibited. Exceptional circumstances include, but are not  
403 limited to, a material and prejudicial change of position prior to



404 acquiring knowledge or reason to know of misappropriation that  
405 renders a prohibitive injunction inequitable.

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

408 **SECTION 12.** Section 75-26-11, Mississippi Code of 1972, is  
409 amended as follows:

410 75-26-11. Except as provided in Section 9 of House  
411 Bill No. 19, Third Extraordinary Session 2002, in an action under  
412 this chapter, a court shall preserve the secrecy of an alleged  
413 trade secret by reasonable means, which may include granting  
414 protective orders in connection with discovery proceedings,  
415 holding in-camera hearings, sealing the records of the action and  
416 ordering any person involved in the litigation not to disclose an  
417 alleged trade secret without prior court approval.

418 **SECTION 13.** Section 75-26-15, Mississippi Code of 1972, is  
419 amended as follows:

420 75-26-15. (1) Except as provided in subsection (2), this  
421 chapter displaces conflicting tort, restitutionary and other law  
422 of this state providing civil remedies for misappropriation of a  
423 trade secret.

424 (2) This chapter does not affect:

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

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

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

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

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



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

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

444 **SECTION 15.** (1) Any sponsor or advertiser of an event,  
445 which does not exercise control over any aspect of the event other  
446 than acting as a sponsor or advertiser, shall be immune from  
447 liability for any civil action arising out of activities occurring  
448 on the premises of the location where the event is held or  
449 conducted.

450 (2) No sponsor or advertiser shall be liable to a person who  
451 may lawfully consume any intoxicating beverage for any injury  
452 suffered by such person, or by any other person, off the premises  
453 of the event, including wrongful death and property damage,  
454 because of the intoxication of the person to whom the intoxicating  
455 beverages were served or furnished when on the premises of the  
456 event.

457 (3) This section shall not extend immunity to willful acts  
458 or gross negligence on the part of a sponsor or advertiser;  
459 however, the sponsor or advertiser shall not be considered to be a  
460 part of a joint venture or the principal of an agent, with regard  
461 to any other person, corporation or legal entity which is  
462 participating in the event in any capacity other than that of  
463 sponsor or advertiser.

464 **SECTION 16.** The following shall be codified as Section  
465 11-7-30, Mississippi Code of 1972:

466 11-7-30. Civil actions in circuit court shall not be  
467 assigned to a judge until at least one (1) defendant has filed a  
468 responsive pleading.



469           **SECTION 17.** Section 11-1-65, Mississippi Code of 1972, is  
470 amended as follows:

471           11-1-65. (1) In any action in which punitive damages are  
472 sought:

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

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

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

486                   (d) The court shall determine whether the issue of  
487 punitive damages may be submitted to the trier of fact; and, if  
488 so, the trier of fact shall determine whether to award punitive  
489 damages and in what amount.

490                   (e) In all cases involving an award of punitive  
491 damages, the fact finder, in determining the amount of punitive  
492 damages, shall consider, to the extent relevant, the following:  
493 the defendant's financial condition and net worth; the nature and  
494 reprehensibility of the defendant's wrongdoing, for example, the  
495 impact of the defendant's conduct on the plaintiff, or the  
496 relationship of the defendant to the plaintiff; the defendant's  
497 awareness of the amount of harm being caused and the defendant's  
498 motivation in causing such harm; the duration of the defendant's  
499 misconduct and whether the defendant attempted to conceal such  
500 misconduct; and any other circumstances shown by the evidence that  
501 bear on determining a proper amount of punitive damages. The



502 trier of fact shall be instructed that the primary purpose of  
503 punitive damages is to punish the wrongdoer and deter similar  
504 misconduct in the future by the defendant and others while the  
505 purpose of compensatory damages is to make the plaintiff whole.

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

511 (ii) In determining whether the award is  
512 excessive, the court shall take into consideration the following  
513 factors:

514 1. Whether there is a reasonable relationship  
515 between the punitive damage award and the harm likely to result  
516 from the defendant's conduct as well as the harm that actually  
517 occurred;

518 2. The degree of reprehensibility of the  
519 defendant's conduct, the duration of that conduct, the defendant's  
520 awareness, any concealment, and the existence and frequency of  
521 similar past conduct;

522 3. The financial condition and net worth of  
523 the defendant; and

524 4. In mitigation, the imposition of criminal  
525 sanctions on the defendant for its conduct and the existence of  
526 other civil awards against the defendant for the same conduct.

527 (2) The seller of a product other than the manufacturer  
528 shall not be liable for punitive damages unless the seller  
529 exercised substantial control over that aspect of the design,  
530 testing, manufacture, packaging or labeling of the product that  
531 caused the harm for which recovery of damages is sought; the  
532 seller altered or modified the product, and the alteration or  
533 modification was a substantial factor in causing the harm for  
534 which recovery of damages is sought; the seller had actual





535 knowledge of the defective condition of the product at the time he  
536 supplied same; or the seller made an express factual  
537 representation about the aspect of the product which caused the  
538 harm for which recovery of damages is sought.

539 (3) In a civil action against a business where an  
540 entitlement to punitive damages shall have been established under  
541 applicable laws, no award of punitive damages shall exceed four  
542 percent (4%) of the net worth of the business, as such amount  
543 shall be determined in accordance with Generally Accepted  
544 Accounting Principles, unless the finder of fact and court find by  
545 clear and convincing evidence that the defendant acted with  
546 criminal intent to cause serious physical bodily injury. This  
547 restriction shall not be disclosed to the trier of fact, but shall  
548 be applied by the court to any punitive damages verdict. The  
549 limitations in damages to civil actions seeking punitive damages  
550 as provided for in this subsection shall not apply to civil  
551 actions seeking punitive damages for breach of fiduciary duty in  
552 actions against businesses while engaged in core business  
553 activities of money management, providing legal or accounting  
554 services, stock or bond brokerage, management of retirement  
555 accounts or for those engaged in conduct constituting a crime or  
556 for those engaged in conduct which constitutes abuse, exploitation  
557 or willful neglect of a vulnerable adult, as those terms are  
558 defined in the Mississippi Vulnerable Adult Act.

559 (4) Nothing herein shall be construed as creating a right to  
560 an award of punitive damages or to limit the duty of the court, or  
561 the appellate courts, to scrutinize all punitive damage awards,  
562 ensure that all punitive damage awards comply with applicable  
563 procedural, evidentiary and constitutional requirements, and to  
564 order additur or remittitur where appropriate.

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

567 (a) Contracts;



568 (b) Libel and slander; or

569 (c) Causes of action for persons and property arising  
570 out of asbestos.

571 **SECTION 18.** (1) In any civil action there may be a recovery  
572 for pain and suffering and loss of enjoyment of life. However,  
573 there shall be no recovery for loss of enjoyment of life as a  
574 separate element of damages apart from pain and suffering damages,  
575 and there shall be no instruction given to the jury which  
576 separates loss of enjoyment of life from pain and suffering. The  
577 determination of the existence and extent of recovery for pain and  
578 suffering and loss of enjoyment of life shall be a question for  
579 the finder of fact, subject to appellate review, and shall not be  
580 made the subject of expert testimony.

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

583 **SECTION 19.** Section 11-7-13, Mississippi Code of 1972, is  
584 amended as follows:

585 11-7-13. Whenever the death of any person shall be caused by  
586 any real, wrongful or negligent act or omission, or by such unsafe  
587 machinery, way or appliances as would, if death had not ensued,  
588 have entitled the party injured or damaged thereby to maintain an  
589 action and recover damages in respect thereof, or whenever the  
590 death of any person shall be caused by the breach of any warranty,  
591 express or implied, of the purity or fitness of any foods, drugs,  
592 medicines, beverages, tobacco or any and all other articles or  
593 commodities intended for human consumption, as would, had the  
594 death not ensued, have entitled the person injured or made ill or  
595 damaged thereby, to maintain an action and recover damages in  
596 respect thereof, and such deceased person shall have left a widow  
597 or children or both, or husband or father or mother, or sister, or  
598 brother, the person or corporation, or both that would have been  
599 liable if death had not ensued, and the representatives of such  
600 person shall be liable for damages, notwithstanding the death, and



601 the fact that death was instantaneous shall in no case affect the  
602 right of recovery. The action for such damages may be brought in  
603 the name of the personal representative of the deceased person for  
604 the benefit of all persons entitled under the law to recover, or  
605 by widow for the death of her husband, or by the husband for the  
606 death of the wife, or by the parent for the death of a child, or  
607 in the name of a child, or in the name of a child for the death of  
608 a parent, or by a brother for the death of a sister, or by a  
609 sister for the death of a brother, or by a sister for the death of  
610 a sister, or a brother for the death of a brother, or all parties  
611 interested may join in the suit, and there shall be but one (1)  
612 suit for the same death which shall ensue for the benefit of all  
613 parties concerned, but the determination of such suit shall not  
614 bar another action unless it be decided on its merits. Except as  
615 otherwise provided in Section 17 of this act, in such action the  
616 party or parties suing shall recover such damages allowable by law  
617 as the jury may determine to be just, taking into consideration  
618 all the damages of every kind to the decedent and all damages of  
619 every kind to any and all parties interested in the suit.

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

626 Any person entitled to bring a wrongful death action may  
627 assert or maintain a claim for any breach of expressed warranty or  
628 for any breach of implied warranty. A wrongful death action may  
629 be maintained or asserted for strict liability in tort or for any  
630 cause of action known to the law for which any person,  
631 corporation, legal representative or entity would be liable for  
632 damages if death had not ensued.



633 In an action brought pursuant to the provisions of this  
634 section by the widow, husband, child, father, mother, sister or  
635 brother of the deceased, or by all interested parties, such party  
636 or parties may recover as damages property damages and funeral,  
637 medical or other related expenses incurred by or for the deceased  
638 as a result of such wrongful or negligent act or omission or  
639 breach of warranty, whether an estate has been opened or not. Any  
640 amount, but only such an amount, as may be recovered for property  
641 damage, funeral, medical or other related expenses shall be  
642 subject only to the payment of the debts or liabilities of the  
643 deceased for property damages, funeral, medical or other related  
644 expenses. All other damages recovered under the provisions of  
645 this section shall not be subject to the payment of the debts or  
646 liabilities of the deceased, except as hereinafter provided, and  
647 such damages shall be distributed as follows:

648 Damages for the injury and death of a married man shall be  
649 equally distributed to his wife and children, and if he has no  
650 children all shall go to his wife; damages for the injury and  
651 death of a married woman shall be equally distributed to the  
652 husband and children, and if she has no children all shall go to  
653 the husband; and if the deceased has no husband or wife, the  
654 damages shall be equally distributed to the children; if the  
655 deceased has no husband, nor wife, nor children, the damages shall  
656 be distributed equally to the father, mother, brothers and  
657 sisters, or such of them as the deceased may have living at his or  
658 her death. If the deceased have neither husband, nor wife, nor  
659 children, nor father, nor mother, nor sister, nor brother, then  
660 the damages shall go to the legal representative, subject to debts  
661 and general distribution, and the fact that the deceased was  
662 instantly killed shall not affect the right of the legal  
663 representative to recover. All references in this section to  
664 children shall include descendants of a deceased child, such  
665 descendants to take the share of the deceased child by



666 representation. There shall not be, in any case, a distinction  
667 between the kindred of the whole and half blood of equal degree.  
668 The provisions of this section shall apply to illegitimate  
669 children on account of the death of the mother and to the mother  
670 on account of the death of an illegitimate child or children, and  
671 they shall have all the benefits, rights and remedies conferred by  
672 this section on legitimates. The provisions of this section shall  
673 apply to illegitimate children on account of the death of the  
674 natural father and to the natural father on account of the death  
675 of the illegitimate child or children, and they shall have all the  
676 benefits, rights and remedies conferred by this section on  
677 legitimates, if the survivor has or establishes the right to  
678 inherit from the deceased under Section 91-1-15.

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

684 **SECTION 20.** If any provision of this act is held by a court  
685 to be invalid, such invalidity shall not affect the remaining  
686 provisions of this act, and to this end the provisions of this act  
687 are declared severable.

688 **SECTION 21.** The provisions of Section 16 of this act shall  
689 take effect and be in force from and after January 1, 2003, and  
690 shall apply only to causes of action occurring on or after that  
691 date. The provisions of all other sections of this act shall take  
692 effect and be in force from and after passage of this act, and  
693 shall apply only to causes of action occurring on or after that  
694 date.

