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To: Select Senate Cmte on
Civil Justice Syst

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2011

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

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

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



47 11-11-3. * * * Civil actions of which the circuit court has
48 original jurisdiction shall be commenced * * * in the county where
49 the alleged act or omission occurred * * *. Venue shall be proper
50 as to each and every named plaintiff. If the venue is improper as
51 to any plaintiff, then the claims involving that plaintiff shall
52 be severed and transferred to a county where venue is proper as to
53 such claims, or dismissed without prejudice if there exists no
54 county of proper venue.

55 * * *

56 **SECTION 2.** Sections 11-11-5, 11-11-7, 11-11-11 and 11-11-13,
57 Mississippi Code of 1972, which provide venue in actions against
58 nonresidents, nonresident motorists, railroads and insurance
59 companies, are hereby repealed.

60 **SECTION 3.** The following shall be codified as Section
61 11-1-64, Mississippi Code of 1972:

62 11-1-64. (1) In any civil action alleging damages caused by
63 a product, a product seller other than a manufacturer shall not be
64 liable for a latent defect if the seller is a mere conduit who
65 purchased the product from a reputable manufacturer. It is the
66 intent of this section to insulate innocent sellers who are not
67 actively negligent from forum driven lawsuits.

68 (2) A product seller shall not be considered to have failed
69 to exercise reasonable care with respect to a product, based upon
70 an alleged failure to inspect the product, if there was no
71 reasonable opportunity to inspect the product; or the inspection,
72 in the exercise of reasonable care, would not have revealed that
73 the product was defective.

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

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



79 11-1-63. In any action for damages caused by a product
80 except for commercial damage to the product itself:

81 (a) Subject to the provisions of Section 11-1-64, the
82 manufacturer or seller of the product shall not be liable if the
83 claimant does not prove by the preponderance of the evidence that
84 at the time the product left the control of the manufacturer or
85 seller:

86 (i) 1. The product was defective because it
87 deviated in a material way from the manufacturer's specifications
88 or from otherwise identical units manufactured to the same
89 manufacturing specifications, or

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

92 3. The product was designed in a defective
93 manner, or

94 4. The product breached an express warranty
95 or failed to conform to other express factual representations upon
96 which the claimant justifiably relied in electing to use the
97 product; and

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

100 (iii) The defective and unreasonably dangerous
101 condition of the product proximately caused the damages for which
102 recovery is sought.

103 (b) A product is not defective in design or formulation
104 if the harm for which the claimant seeks to recover compensatory
105 damages was caused by an inherent characteristic of the product
106 which is a generic aspect of the product that cannot be eliminated
107 without substantially compromising the product's usefulness or
108 desirability and which is recognized by the ordinary person with
109 the ordinary knowledge common to the community.

110 (c) (i) In any action alleging that a product is
111 defective because it failed to contain adequate warnings or



112 instructions pursuant to paragraph (a)(i)2 of this section, the
113 manufacturer or seller shall not be liable if the claimant does
114 not prove by the preponderance of the evidence that at the time
115 the product left the control of the manufacturer or seller, the
116 manufacturer or seller knew or in light of reasonably available
117 knowledge should have known about the danger that caused the
118 damage for which recovery is sought and that the ordinary user or
119 consumer would not realize its dangerous condition.

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

133 (d) In any action alleging that a product is defective
134 pursuant to paragraph (a) of this section, the manufacturer or
135 seller shall not be liable if the claimant (i) had knowledge of a
136 condition of the product that was inconsistent with his safety;
137 (ii) appreciated the danger in the condition; and (iii)
138 deliberately and voluntarily chose to expose himself to the danger
139 in such a manner to register assent on the continuance of the
140 dangerous condition.

141 (e) In any action alleging that a product is defective
142 pursuant to paragraph (a)(i)2 of this section, the manufacturer or
143 seller shall not be liable if the danger posed by the product is
144 known or is open and obvious to the user or consumer of the



145 product, or should have been known or open and obvious to the user
146 or consumer of the product, taking into account the
147 characteristics of, and the ordinary knowledge common to, the
148 persons who ordinarily use or consume the product.

149 (f) In any action alleging that a product is defective
150 because of its design pursuant to paragraph (a)(i)3 of this
151 section, the manufacturer or product seller shall not be liable if
152 the claimant does not prove by the preponderance of the evidence
153 that at the time the product left the control of the manufacturer
154 or seller:

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

159 (ii) The product failed to function as expected
160 and there existed a feasible design alternative that would have to
161 a reasonable probability prevented the harm. A feasible design
162 alternative is a design that would have to a reasonable
163 probability prevented the harm without impairing the utility,
164 usefulness, practicality or desirability of the product to users
165 or consumers.

166 (g) (i) The manufacturer of a product who is found
167 liable for a defective product pursuant to paragraph (a) shall
168 indemnify a product seller for the costs of litigation, any
169 reasonable expenses, reasonable attorney's fees and any damages
170 awarded by the trier of fact unless the seller exercised
171 substantial control over that aspect of the design, testing,
172 manufacture, packaging or labeling of the product that caused the
173 harm for which recovery of damages is sought; the seller altered
174 or modified the product, and the alteration or modification was a
175 substantial factor in causing the harm for which recovery of
176 damages is sought; the seller had actual knowledge of the
177 defective condition of the product at the time he supplied same;



178 or the seller made an express factual representation about the
179 aspect of the product which caused the harm for which recovery of
180 damages is sought.

181 (ii) Subparagraph (i) shall not apply unless the
182 seller has given prompt notice of the suit to the manufacturer
183 within thirty (30) days of the filing of the complaint against the
184 seller.

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

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

191 85-5-7. (1) As used in this section "fault" means an act or
192 omission of a person which is a proximate cause of injury or death
193 to another person or persons, damages to property, tangible or
194 intangible, or economic injury, including, but not limited to,
195 negligence, malpractice, strict liability, absolute liability or
196 failure to warn. "Fault" shall not include any tort which results
197 from an act or omission committed with a specific wrongful intent.

198 * * *

199 (2) Except as may be otherwise provided in subsection (4) of
200 this section, in any civil action based on fault, the liability
201 for damages caused by two (2) or more persons shall be several
202 only, and not joint and several and a joint tort-feasor shall be
203 liable only for the amount of damages allocated to him in direct
204 proportion to his percentage of fault. In assessing percentages
205 of fault, an employer and the employer's employee or a principal
206 and the principal's agent shall be considered as one (1) defendant
207 when the liability of such employer or principal has been caused
208 by the wrongful or negligent act or omission of the employee or
209 agent.

210 * * *



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

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

220 (5) In actions involving joint tort-feasors, the trier of
221 fact shall determine the percentage of fault for each joint
222 tort-feasor, including named parties and absent tort-feasors
223 without regard to whether the joint tort-feasor is immune from
224 damages. Fault allocated to an immune tort-feasor or a
225 tort-feasor whose liability is limited by law shall not be
226 reallocated to any other tort-feasor.

227 * * *

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

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

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

236 (a) "Noneconomic damages" means subjective,
237 nonpecuniary damages arising from death, pain, suffering,
238 inconvenience, mental anguish, worry, emotional distress, loss of
239 society and companionship, loss of consortium, bystander injury,
240 physical impairment, injury to reputation, humiliation,
241 embarrassment, * * * other nonpecuniary damages, and any other
242 theory of damages such as fear of loss, illness or injury. The



243 term "noneconomic damages" shall not include damages for
244 disfigurement, nor does it include punitive or exemplary damages.

245 (b) "Actual economic damages" means objectively
246 verifiable pecuniary damages arising from medical expenses and
247 medical care, rehabilitation services, custodial care,
248 disabilities, loss of earnings and earning capacity, loss of
249 income, burial costs, loss of use of property, costs of repair or
250 replacement of property, costs of obtaining substitute domestic
251 services, loss of employment, loss of business or employment
252 opportunities, and other objectively verifiable monetary losses.

253 * * *

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

257 (i) For claims for causes of action filed on or
258 after passage of Senate Bill No. 2011, 2002 Third Extraordinary
259 Session, but before July 1, 2011, the sum of Five Hundred Thousand
260 Dollars (\$500,000.00);

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

264 (iii) For claims for causes of action filed on or
265 after July 1, 2017, the sum of One Million Dollars
266 (\$1,000,000.00).

267 (b) The jury shall not be advised of the limitations
268 imposed by this subsection (2) and the judge shall appropriately
269 reduce any award of noneconomic damages that exceeds the
270 applicable limitation.

271 * * *

272 (3) Nothing in this section shall be construed to impose a
273 limitation on damages for disfigurement or actual economic
274 damages.



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

277 11-1-65. (1) In any action in which punitive damages are
278 sought:

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

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

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

292 (d) The court shall determine whether the issue of
293 punitive damages may be submitted to the trier of fact; and, if
294 so, the trier of fact shall determine whether to award punitive
295 damages and in what amount.

296 (e) In all cases involving an award of punitive
297 damages, the fact finder, in determining the amount of punitive
298 damages, shall consider, to the extent relevant, the following:
299 the defendant's financial condition and net worth; the nature and
300 reprehensibility of the defendant's wrongdoing, for example, the
301 impact of the defendant's conduct on the plaintiff, or the
302 relationship of the defendant to the plaintiff; the defendant's
303 awareness of the amount of harm being caused and the defendant's
304 motivation in causing such harm; the duration of the defendant's
305 misconduct and whether the defendant attempted to conceal such
306 misconduct; and any other circumstances shown by the evidence that
307 bear on determining a proper amount of punitive damages. The



308 trier of fact shall be instructed that the primary purpose of
309 punitive damages is to punish the wrongdoer and deter similar
310 misconduct in the future by the defendant and others while the
311 purpose of compensatory damages is to make the plaintiff whole.

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

317 (ii) In determining whether the award is
318 excessive, the court shall take into consideration the following
319 factors:

320 1. Whether there is a reasonable relationship
321 between the punitive damage award and the harm likely to result
322 from the defendant's conduct as well as the harm that actually
323 occurred;

324 2. The degree of reprehensibility of the
325 defendant's conduct, the duration of that conduct, the defendant's
326 awareness, any concealment, and the existence and frequency of
327 similar past conduct;

328 3. The financial condition and net worth of
329 the defendant; and

330 4. In mitigation, the imposition of criminal
331 sanctions on the defendant for its conduct and the existence of
332 other civil awards against the defendant for the same conduct.

333 (2) The seller of a product other than the manufacturer
334 shall not be liable for punitive damages unless the seller
335 exercised substantial control over that aspect of the design,
336 testing, manufacture, packaging or labeling of the product that
337 caused the harm for which recovery of damages is sought; the
338 seller altered or modified the product, and the alteration or
339 modification was a substantial factor in causing the harm for
340 which recovery of damages is sought; the seller had actual



341 knowledge of the defective condition of the product at the time he
342 supplied same; or the seller made an express factual
343 representation about the aspect of the product which caused the
344 harm for which recovery of damages is sought.

345 (3) In all civil actions where an entitlement to punitive
346 damages shall have been established under applicable laws, no
347 award of punitive damages shall exceed the greater of three (3)
348 times the amount of the total compensatory damages awarded to the
349 plaintiff in an action or Three Million Dollars (\$3,000,000.00);
350 however, if the defendant is an individual or a business with less
351 than fifty (50) full-time employees, an award of punitive damages
352 shall not exceed two (2) times the amount of the plaintiff's
353 compensatory damages or Two Million Dollars (\$2,000,000.00) or
354 three percent (3%) of such defendant's net worth, whichever is
355 less, unless the finder of fact and court find by clear and
356 convincing evidence that the defendant acted with criminal intent
357 to cause serious physical bodily injury. This restriction shall
358 not be disclosed to the trier of fact, but shall be applied by the
359 court to any punitive damages verdict.

360 (4) Nothing herein shall be construed as creating a right to
361 an award of punitive damages or to limit the duty of the court, or
362 the appellate courts, to scrutinize all punitive damage awards,
363 ensure that all punitive damage awards comply with applicable
364 procedural, evidentiary and constitutional requirements, and to
365 order remittitur where appropriate.

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

- 368 (a) Contracts;
- 369 (b) Libel and slander; or
- 370 (c) Causes of action for persons and property arising
- 371 out of asbestos.



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

375 (a) "Sponsor" means any person, corporation or legal
376 entity which, for charitable purposes or to promote good will in
377 the community, (i) sells, rents, manufactures or provides
378 products, equipment or promotional materials, or (ii) donates or
379 contributes money or fees in order that an event may be held or
380 conducted.

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

385 (2) (a) Any sponsor of an event, which does not exercise
386 control over any aspect of the event other than acting as a
387 sponsor, shall be immune from liability for any civil action
388 arising out of activities occurring on the premises of the
389 location where the event is held or conducted.

390 (b) No sponsor shall be liable to a person who may
391 lawfully consume any intoxicating beverage for any injury suffered
392 by such person, or by any other person, off the premises of the
393 event, including wrongful death and property damage, because of
394 the intoxication of the person to whom the intoxicating beverages
395 were served or furnished when on the premises of the event.

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

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



404 67-3-73. (1) The Mississippi Legislature finds and declares
405 that the consumption of intoxicating beverages, rather than the
406 sale or serving or furnishing of such beverages, is the proximate
407 cause of any injury, including death and property damage,
408 inflicted by an intoxicated person upon himself or upon another
409 person.

410 (2) Notwithstanding any other law to the contrary, no holder
411 of an alcoholic beverage, beer or light wine permit, or any agent
412 or employee of such holder, who lawfully sells or serves
413 intoxicating beverages to a person who may lawfully purchase such
414 intoxicating beverages, shall be liable to such person or to any
415 other person or to the estate, or survivors of either, for any
416 injury suffered off the licensed premises, including wrongful
417 death and property damage, because of the intoxication of the
418 person to whom the intoxicating beverages were sold or served.

419 (3) Notwithstanding any other law to the contrary, no social
420 host who serves or furnishes any intoxicating beverage to a person
421 who may lawfully consume such intoxicating beverage shall be
422 liable to such person or to any other person or to the estate, or
423 survivors of either, for any injury suffered off such social
424 host's premises, including wrongful death and property damage,
425 because of the intoxication of the person to whom the intoxicating
426 beverages were served or furnished. No social host who owns,
427 leases or otherwise lawfully occupies a premises on which, in his
428 absence and without his consent, intoxicating beverages are
429 consumed by a person who may lawfully consume such intoxicating
430 beverage shall be liable to such person or to any other person or
431 to the estate, or survivors of either, for any injury suffered off
432 the premises, including wrongful death and property damage,
433 because of the intoxication of the person who consumed the
434 intoxicating beverages.

435 (4) The limitation of liability provided by this section
436 shall not apply to any person who causes or contributes to the



437 consumption of alcoholic beverages by force or by falsely
438 representing that a beverage contains no alcohol, or to any holder
439 of an alcoholic beverage, beer or light wine permit, or any agent
440 or employee of such holder when it is shown that the person making
441 a purchase of an alcoholic beverage was at the time of such
442 purchase visibly intoxicated.

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

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

451 **SECTION 11.** Civil actions in circuit, chancery and county
452 court shall not be assigned to a judge until at least one (1)
453 defendant has filed a responsive pleading. However, any necessary
454 preliminary matters may be decided by a judge on a separate
455 rotating basis before assignment of the action to a particular
456 judge.

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

462 **SECTION 13.** On motion by a defendant or upon its own motion,
463 the court shall hear evidence of any amount of such damages
464 incurred prior to the judgment which the defendant or defendants
465 claim was replaced, compensated or indemnified pursuant to the
466 United States Social Security Act, any state or federal
467 income-disability act, any health, sickness or income-disability
468 insurance, any accident insurance that provides health benefits or
469 income-disability coverage, any contract or agreement of any



470 group, organization, partnership, or corporation to provide, pay
471 for or reimburse the cost of medical, hospital, dental or other
472 health care services, any contract or agreement to continue to
473 pay, in whole or in part, the plaintiff's wages or income, or any
474 other collateral source of benefits whatsoever. If the defendant
475 elects to introduce such evidence, the plaintiff may introduce
476 evidence of any amount the plaintiff himself paid or contributed
477 to secure his right to the benefits concerning which the defendant
478 has introduced evidence. The plaintiff may also introduce
479 evidence of any leave time lost due to the personal injury. The
480 presiding judge shall reduce the jury award by the amount of such
481 benefits less any amount which the plaintiff has paid or
482 contributed to secure such benefits. There shall be no reduction
483 for collateral sources for which a subrogation or reimbursement
484 right exists. Such reduction shall be offset to the extent of any
485 amount which has been paid, contributed, or forfeited by, or on
486 behalf of, the claimant or members of the claimant's immediate
487 family to secure her or his right to any collateral source benefit
488 which the claimant is receiving as a result of her or his injury.

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

491 75-67-103. The following words and phrases, when used in
492 this article, shall, for the purposes of this article, have the
493 meanings respectively ascribed to them in this section, except
494 where the context clearly describes and indicates a different
495 meaning:

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

499 (b) "Licensee" means and includes every person holding
500 a valid license issued under the provisions of the Small Loan
501 Privilege Tax Law [Sections 75-67-201 through 75-67-243] of this
502 state, except those specifically exempt by the provisions of this



503 article, who, in addition to any other rights and powers he or it
504 might otherwise possess, shall engage in the business of lending
505 money either directly or indirectly, to be paid back in monthly
506 installments or other regular installments for periods of more or
507 less than one (1) month, and whether or not the lender requires
508 security from the borrower as indemnity for the repayment of the
509 loan.

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

513 (d) "Commissioner" means the Commissioner of Banking
514 and Consumer Finance of the State of Mississippi.

515 (e) "Department" means the Department of Banking and
516 Consumer Finance of the State of Mississippi.

517 (f) "Records" or "documents" means any item in hard
518 copy or produced in a format of storage commonly described as
519 electronic, imaged, magnetic, microphotographic or otherwise, and
520 any reproduction so made shall have the same force and effect as
521 the original thereof and be admitted in evidence equally with the
522 original.

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

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

528 75-67-119. (1) If any finance charge in excess of that
529 expressly permitted by Section 75-17-21 is contracted for or
530 received, all finance charges and other charges shall be forfeited
531 and may be recovered, whether the contract be executed or
532 executory. If any finance charge is contracted for or received
533 that exceeds the maximum finance charge authorized by law by more
534 than one hundred percent (100%), the principal and all finance
535 charges and other charges shall be forfeited and any amount paid



536 may be recovered by suit; and, in addition, the licensee and the
537 several members, officers, directors, agents, and employees
538 thereof who shall have participated in such violation shall be
539 guilty of a misdemeanor and, upon conviction thereof, shall be
540 punished by a fine of not more than One Thousand Dollars
541 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
542 the discretion of the court; and, further, the Commissioner of
543 Banking and Consumer Finance shall forthwith cite such licensee to
544 show cause why its license should not be revoked and proceedings
545 thereon shall be as is specifically provided in the Small Loan
546 Privilege Tax Law (Sections 75-67-201 to 75-67-243).

547 (2) If any licensee or other person violates any provision
548 of this article or any rule or regulation promulgated pursuant to
549 this article or any provision of Title 75, Chapter 17, of the
550 Mississippi Code of 1972, or contracts for or receives, or
551 participates in contracting for or receiving, other charges by
552 false, misleading, deceptive or fraudulent means, or in violation
553 of any applicable statutory or common law duty, or which are
554 otherwise unlawful, all such unlawful other charges shall be
555 forfeited and may be recovered, whether the contract be executed
556 or executory. If the other charges subject to forfeiture under
557 this section exceed Five Hundred Dollars (\$500.00), all finance
558 charges shall additionally be forfeited and may be recovered. If
559 the other charges subject to forfeiture under this section exceed
560 One Thousand Five Hundred Dollars (\$1,500.00), all principal shall
561 additionally be forfeited and may be recovered.

562 (3) Except as provided in subsection (4) of this section,
563 the remedies and penalties provided in this section shall be the
564 exclusive remedies and penalties for all claims against a licensee
565 or any other person for contracting for or receiving any finance
566 charge in excess of that expressly permitted by Section 75-17-21,
567 or for violation of any provision of this article or any rule or
568 regulation promulgated pursuant to this article or any provision



569 of Title 75, Chapter 17, of the Mississippi Code of 1972, or for
570 contracting for or receiving, or participating in contracting for
571 or receiving, other charges by false, misleading, deceptive or
572 fraudulent means, or in violation of any applicable statutory or
573 common law duty, or which are otherwise unlawful.

574 (4) The remedies and penalties provided in this section are
575 supplemental to the defense provided in Section 75-67-127(3) and
576 to the enforcement powers conferred upon the Commissioner of
577 Banking and Consumer Finance.

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

580 75-17-25. (1) The term "finance charge" as used in this
581 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
582 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
583 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
584 payable, directly or indirectly, by a debtor for receiving a loan
585 or incident to or as a condition of the extension of credit,
586 including, but not limited to, interest, brokerage fees, finance
587 charges, loan fees, discount, points, service charges, transaction
588 charges, activity charges, carrying charges, time price
589 differential, finders fees or any other cost or expense to the
590 debtor for services rendered or to be rendered to the debtor in
591 making, arranging or negotiating a loan of money or an extension
592 of credit and for the accounting, guaranteeing, endorsing,
593 collecting and other actual services rendered by the lender;
594 provided, however, that recording fees, motor vehicle title fees,
595 attorney's fees, insurance premiums, fees permitted to be charged
596 under the provisions of Section 79-7-7, service charges as
597 provided in Section 81-19-31, and with respect to a debt secured
598 by an interest in land, bona fide closing costs and appraisal fees
599 incidental to the transaction shall not be included in the finance
600 charge.



601 (2) Subject to the other provisions of this section,
602 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
603 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
604 75-67-127 and 75-67-217, the finance charge may be calculated on
605 the assumption that the indebtedness will be discharged as it
606 becomes due, and prepayment penalties and statutory default
607 charges shall not be included in the finance charge. Nothing in
608 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,
609 75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner
610 of contracting for such finance charge, whether by way of add-on,
611 discount or otherwise, so long as the annual percentage rate does
612 not exceed that permitted by law. If a greater finance charge
613 than that authorized by applicable law shall be stipulated for or
614 received in any case, all interest and finance charge shall be
615 forfeited, and may be recovered back, whether the contract be
616 executed or executory. If a finance charge be contracted for or
617 received that exceeds the maximum authorized by law by more than
618 one hundred percent (100%), the principal and all finance charges
619 shall be forfeited and any amount paid may be recovered by suit.
620 The provisions of this section, Section 75-17-1 and Sections
621 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
622 shall not restrict the extension of credit pursuant to any other
623 applicable law. A licensee under the Small Loan Regulatory Law
624 (Sections 75-67-101 through 75-67-135), and the Small Loan
625 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may
626 contract for and receive finance charges as authorized by Section
627 75-17-21, and the late payment charge as authorized by Section
628 75-17-27, regardless of the purpose for which the loan or other
629 extension of credit is made.

630 (3) If in connection with a consumer loan any person
631 contracts for or receives, or participates in contracting for or
632 receiving, other charges by false, misleading, deceptive or
633 fraudulent means, or in violation of any applicable statutory or



634 common law duty, or which are otherwise unlawful, all such
635 unlawful other charges shall be forfeited and may be recovered,
636 whether the contract be executed or executory. If the other
637 charges subject to forfeiture under this section exceed Five
638 Hundred Dollars (\$500.00), all finance charges shall additionally
639 be forfeited and may be recovered. If the other charges subject
640 to forfeiture under this section exceed One Thousand Five Hundred
641 Dollars (\$1,500.00), all principal shall additionally be forfeited
642 and may be recovered.

643 The remedies and penalties provided in this section shall be
644 the exclusive remedies and penalties for contracting for or
645 receiving any finance charge in excess of that permitted by
646 applicable law or for contracting for or receiving, or
647 participating in contracting for or receiving, other charges by
648 false, misleading, deceptive or fraudulent means, or in violation
649 of any applicable statutory or common law duty, or which are
650 otherwise unlawful.

651 As used in this subsection (3), the term "consumer loan"
652 shall mean any loan or extension of credit offered or extended
653 primarily for personal, family or household purposes; and the term
654 "other charges" shall mean any amounts contracted for or received
655 by any person in connection with a consumer loan, other than
656 finance charges as defined in this section.

657 **SECTION 17.** Sections 11-3-23 and 11-3-25, Mississippi Code
658 of 1972, which provide for the assessment of a penalty on the
659 appeal of certain judgments to the Supreme Court, are repealed.

660 **SECTION 18.** This act shall take effect and be in force from
661 and after its passage, and shall apply to all causes of action
662 pending on or filed after that date.

