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(29th)

To: Select Senate Cmte on
Civil Justice Syst

SENATE BILL NO. 2011

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

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

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

45 11-11-3. * * * Civil actions of which the circuit court has
46 original jurisdiction shall be commenced * * * in the county where



47 the alleged act or omission occurred * * *. Venue shall be proper
48 as to each and every named defendant and plaintiff. If the venue
49 is improper as to any party, then the claims involving that party
50 shall be severed and transferred to a county where venue is proper
51 as to such claims, or dismissed without prejudice if there exists
52 no county of proper venue.

53 * * *

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

58 **SECTION 3.** The following shall be codified as Section
59 11-1-64, Mississippi Code of 1972:

60 11-1-64 (1) In any civil action alleging damages caused by
61 a product, a product seller other than a manufacturer shall not be
62 liable for a latent defect if the seller is a mere conduit who
63 purchased the product from a reputable manufacturer. It is the
64 intent of this section to insulate innocent sellers who are not
65 actively negligent from forum driven lawsuits.

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

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

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

77 11-1-63. In any action for damages caused by a product
78 except for commercial damage to the product itself:



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

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

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

90 3. The product was designed in a defective
91 manner, or

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

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

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

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

108 (c) (i) In any action alleging that a product is
109 defective because it failed to contain adequate warnings or
110 instructions pursuant to paragraph (a)(i)2 of this section, the
111 manufacturer or seller shall not be liable if the claimant does



112 not prove by the preponderance of the evidence that at the time
113 the product left the control of the manufacturer or seller, the
114 manufacturer or seller knew or in light of reasonably available
115 knowledge should have known about the danger that caused the
116 damage for which recovery is sought and that the ordinary user or
117 consumer would not realize its dangerous condition.

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

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

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



145 characteristics of, and the ordinary knowledge common to, the
146 persons who ordinarily use or consume the product.

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

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

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

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



177 aspect of the product which caused the harm for which recovery of
178 damages is sought.

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

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

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

189 85-5-7. (1) As used in this section "fault" means an act or
190 omission of a person which is a proximate cause of injury or death
191 to another person or persons, damages to property, tangible or
192 intangible, or economic injury, including, but not limited to,
193 negligence, malpractice, strict liability, absolute liability or
194 failure to warn. "Fault" shall not include any tort which results
195 from an act or omission committed with a specific wrongful intent.

196 * * *

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

208 * * *



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

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

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

225 * * *

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

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

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

234 (a) "Noneconomic damages" means subjective,
235 nonpecuniary damages arising from death, pain, suffering,
236 inconvenience, mental anguish, worry, emotional distress, loss of
237 society and companionship, loss of consortium, bystander injury,
238 physical impairment, disfigurement, injury to reputation,
239 humiliation, embarrassment, loss of the enjoyment of life, * * *
240 other nonpecuniary damages, and any other theory of damages such



241 as fear of loss, illness or injury. The term "noneconomic
242 damages" shall not include * * * punitive * * * damages.

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

251 * * *

252 (2) (a) In any civil action for injury * * * if the trier
253 of fact finds the defendant liable, * * * the plaintiff shall not
254 be awarded more than Five Hundred Thousand Dollars (\$500,000.00)
255 for noneconomic damages.

256 * * *

257 (b) The jury shall not be advised of the limitations
258 imposed by this subsection (2) and the judge shall appropriately
259 reduce any award of noneconomic damages that exceeds the
260 applicable limitation.

261 * * *

262 (3) Nothing in this section shall be construed to impose a
263 limitation on * * * actual economic damages.

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

266 11-1-65. (1) In any action in which punitive damages are
267 sought:

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



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

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

281 (d) The court shall determine whether the issue of
282 punitive damages may be submitted to the trier of fact; and, if
283 so, the trier of fact shall determine whether to award punitive
284 damages and in what amount.

285 (e) In all cases involving an award of punitive
286 damages, the fact finder, in determining the amount of punitive
287 damages, shall consider, to the extent relevant, the following:
288 the defendant's financial condition and net worth; the nature and
289 reprehensibility of the defendant's wrongdoing, for example, the
290 impact of the defendant's conduct on the plaintiff, or the
291 relationship of the defendant to the plaintiff; the defendant's
292 awareness of the amount of harm being caused and the defendant's
293 motivation in causing such harm; the duration of the defendant's
294 misconduct and whether the defendant attempted to conceal such
295 misconduct; and any other circumstances shown by the evidence that
296 bear on determining a proper amount of punitive damages. The
297 trier of fact shall be instructed that the primary purpose of
298 punitive damages is to punish the wrongdoer and deter similar
299 misconduct in the future by the defendant and others while the
300 purpose of compensatory damages is to make the plaintiff whole.

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



306 (ii) In determining whether the award is
307 excessive, the court shall take into consideration the following
308 factors:

309 1. Whether there is a reasonable relationship
310 between the punitive damage award and the harm likely to result
311 from the defendant's conduct as well as the harm that actually
312 occurred;

313 2. The degree of reprehensibility of the
314 defendant's conduct, the duration of that conduct, the defendant's
315 awareness, any concealment, and the existence and frequency of
316 similar past conduct;

317 3. The financial condition and net worth of
318 the defendant; and

319 4. In mitigation, the imposition of criminal
320 sanctions on the defendant for its conduct and the existence of
321 other civil awards against the defendant for the same conduct.

322 (2) The seller of a product other than the manufacturer
323 shall not be liable for punitive damages unless the seller
324 exercised substantial control over that aspect of the design,
325 testing, manufacture, packaging or labeling of the product that
326 caused the harm for which recovery of damages is sought; the
327 seller altered or modified the product, and the alteration or
328 modification was a substantial factor in causing the harm for
329 which recovery of damages is sought; the seller had actual
330 knowledge of the defective condition of the product at the time he
331 supplied same; or the seller made an express factual
332 representation about the aspect of the product which caused the
333 harm for which recovery of damages is sought.

334 (3) In all civil actions where an entitlement to punitive
335 damages shall have been established under applicable laws, no
336 award of punitive damages shall exceed the greater of three (3)
337 times the amount of the total compensatory damages awarded to the
338 plaintiff in an action or Three Million Dollars (\$3,000,000.00);



339 however, if the defendant is an individual or a business with less
340 than fifty (50) full-time employees, an award of punitive damages
341 shall not exceed two (2) times the amount of the plaintiff's
342 compensatory damages or Two Million Dollars (\$2,000,000.00) or
343 three percent (3%) of such defendant's net worth, whichever is
344 less, unless the finder of fact and court find by clear and
345 convincing evidence that the defendant acted with criminal intent
346 to cause serious physical bodily injury. This restriction shall
347 not be disclosed to the trier of fact, but shall be applied by the
348 court to any punitive damages verdict.

349 (4) Nothing herein shall be construed as creating a right to
350 an award of punitive damages or to limit the duty of the court, or
351 the appellate courts, to scrutinize all punitive damage awards,
352 ensure that all punitive damage awards comply with applicable
353 procedural, evidentiary and constitutional requirements, and to
354 order remittitur where appropriate.

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

- 357 (a) Contracts;
- 358 (b) Libel and slander; or
- 359 (c) Causes of action for persons and property arising
360 out of asbestos.

361 **SECTION 8.** For purposes of Sections 8 and 9 of this act, the
362 following words and phrases shall have the meanings ascribed in
363 this section unless the context clearly indicates otherwise:

364 (a) "Sponsor" means any person, corporation or legal
365 entity which, for charitable purposes or to promote good will in
366 the community, (i) sells, rents, manufactures or provides
367 products, equipment or promotional materials, or (ii) donates or
368 contributes money or fees in order that an event may be held or
369 conducted.

370 (b) "Event" means a concert, benefit, fund raiser,
371 auction or other occasion at which entertainment, food and



372 beverages are provided to persons who purchase tickets to attend
373 the event.

374 **SECTION 9.** (1) Any sponsor of an event, which does not
375 exercise control over any aspect of the event other than acting as
376 a sponsor, shall be immune from liability for any civil action
377 arising out of activities occurring on the premises of the
378 location where the event is held or conducted.

379 (2) No sponsor shall be liable to a person who may lawfully
380 consume any intoxicating beverage for any injury suffered by such
381 person, or by any other person, off the premises of the event,
382 including wrongful death and property damage, because of the
383 intoxication of the person to whom the intoxicating beverages were
384 served or furnished when on the premises of the event.

385 (3) This section shall not extend immunity to willful acts
386 or gross negligence on the part of a sponsor; however, the sponsor
387 shall not be considered to be a part of a joint venture or the
388 principal of an agent, with regard to any other person,
389 corporation or legal entity which is participating in the event in
390 any capacity other than that of sponsor.

391 **SECTION 10.** Section 67-3-73, Mississippi Code of 1972, is
392 amended as follows:

393 67-3-73. (1) The Mississippi Legislature finds and declares
394 that the consumption of intoxicating beverages, rather than the
395 sale or serving or furnishing of such beverages, is the proximate
396 cause of any injury, including death and property damage,
397 inflicted by an intoxicated person upon himself or upon another
398 person.

399 (2) Notwithstanding any other law to the contrary, no holder
400 of an alcoholic beverage, beer or light wine permit, or any agent
401 or employee of such holder, who lawfully sells or serves
402 intoxicating beverages to a person who may lawfully purchase such
403 intoxicating beverages, shall be liable to such person or to any
404 other person or to the estate, or survivors of either, for any



405 injury suffered off the licensed premises, including wrongful
406 death and property damage, because of the intoxication of the
407 person to whom the intoxicating beverages were sold or served.

408 (3) Notwithstanding any other law to the contrary, no social
409 host who serves or furnishes any intoxicating beverage to a person
410 who may lawfully consume such intoxicating beverage shall be
411 liable to such person or to any other person or to the estate, or
412 survivors of either, for any injury suffered off such social
413 host's premises, including wrongful death and property damage,
414 because of the intoxication of the person to whom the intoxicating
415 beverages were served or furnished. No social host who owns,
416 leases or otherwise lawfully occupies a premises on which, in his
417 absence and without his consent, intoxicating beverages are
418 consumed by a person who may lawfully consume such intoxicating
419 beverage shall be liable to such person or to any other person or
420 to the estate, or survivors of either, for any injury suffered off
421 the premises, including wrongful death and property damage,
422 because of the intoxication of the person who consumed the
423 intoxicating beverages.

424 (4) The limitation of liability provided by this section
425 shall not apply to any person who causes or contributes to the
426 consumption of alcoholic beverages by force or by falsely
427 representing that a beverage contains no alcohol, or to any holder
428 of an alcoholic beverage, beer or light wine permit, or any agent
429 or employee of such holder when it is shown that the person making
430 a purchase of an alcoholic beverage was at the time of such
431 purchase visibly intoxicated.

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

435 **SECTION 11.** No owner, lessee or person in control of any
436 property or premises shall be held liable for failing to prevent
437 or failing to deter any act or omission committed by another



438 person upon such property or premises that is a reckless, wanton,
439 intentionally wrongful, illegal or criminal act.

440 **SECTION 12.** The following shall be codified as Section
441 11-7-30, Mississippi Code of 1972:

442 11-7-30. Civil actions in circuit court shall not be
443 assigned to a judge until at least one (1) defendant has filed a
444 responsive pleading. However, the senior judge or his designee
445 shall enter any necessary preliminary orders before assignment of
446 the action.

447 **SECTION 13.** There shall be no recovery for hedonic damages
448 in any civil actions. For purposes of this section, hedonic
449 damages means damages for the enjoyment of life of the deceased,
450 as measured separately from the economic productive value that an
451 injured or deceased person would have had.

452 **SECTION 14.** On motion by a defendant or upon its own motion,
453 the court shall hear evidence of any amount of such damages
454 incurred prior to the judgment which the defendant or defendants
455 claim was replaced, compensated or indemnified pursuant to the
456 United States Social Security Act, any state or federal
457 income-disability act, any health, sickness or income-disability
458 insurance, any accident insurance that provides health benefits or
459 income-disability coverage, any contract or agreement of any
460 group, organization, partnership, or corporation to provide, pay
461 for or reimburse the cost of medical, hospital, dental or other
462 health care services, any contract or agreement to continue to
463 pay, in whole or in part, the plaintiff's wages or income, or any
464 other collateral source of benefits whatsoever. If the defendant
465 elects to introduce such evidence, the plaintiff may introduce
466 evidence of any amount the plaintiff himself paid or contributed
467 to secure his right to the benefits concerning which the defendant
468 has introduced evidence. The plaintiff may also introduce
469 evidence of any leave time lost due to the personal injury. The
470 presiding judge shall reduce the jury award by the amount of such



471 benefits less any amount which the plaintiff has paid or
472 contributed to secure such benefits. There shall be no reduction
473 for collateral sources for which a subrogation or reimbursement
474 right exists. Such reduction shall be offset to the extent of any
475 amount which has been paid, contributed, or forfeited by, or on
476 behalf of, the claimant or members of the claimant's immediate
477 family to secure her or his right to any collateral source benefit
478 which the claimant is receiving as a result of her or his injury.

479 **SECTION 15.** Section 75-67-103, Mississippi Code of 1972, is
480 amended as follows:

481 75-67-103. The following words and phrases, when used in
482 this article, shall, for the purposes of this article, have the
483 meanings respectively ascribed to them in this section, except
484 where the context clearly describes and indicates a different
485 meaning:

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

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

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



503 (d) "Commissioner" means the Commissioner of Banking
504 and Consumer Finance of the State of Mississippi.

505 (e) "Department" means the Department of Banking and
506 Consumer Finance of the State of Mississippi.

507 (f) "Records" or "documents" means any item in hard
508 copy or produced in a format of storage commonly described as
509 electronic, imaged, magnetic, microphotographic or otherwise, and
510 any reproduction so made shall have the same force and effect as
511 the original thereof and be admitted in evidence equally with the
512 original.

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

516 **SECTION 16.** Section 75-67-119, Mississippi Code of 1972, is
517 amended as follows:

518 75-67-119. (1) If any finance charge in excess of that
519 expressly permitted by Section 75-17-21 is contracted for or
520 received, all finance charges and other charges shall be forfeited
521 and may be recovered, whether the contract be executed or
522 executory. If any finance charge is contracted for or received
523 that exceeds the maximum finance charge authorized by law by more
524 than one hundred percent (100%), the principal and all finance
525 charges and other charges shall be forfeited and any amount paid
526 may be recovered by suit; and, in addition, the licensee and the
527 several members, officers, directors, agents, and employees
528 thereof who shall have participated in such violation shall be
529 guilty of a misdemeanor and, upon conviction thereof, shall be
530 punished by a fine of not more than One Thousand Dollars
531 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
532 the discretion of the court; and, further, the Commissioner of
533 Banking and Consumer Finance shall forthwith cite such licensee to
534 show cause why its license should not be revoked and proceedings



535 thereon shall be as is specifically provided in the Small Loan
536 Privilege Tax Law (Sections 75-67-201 to 75-67-243).

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

552 (3) Except as provided in subsection (4) of this section,
553 the remedies and penalties provided in this section shall be the
554 exclusive remedies and penalties for all claims against a licensee
555 or any other person for contracting for or receiving any finance
556 charge in excess of that expressly permitted by Section 75-17-21,
557 or for violation of any provision of this article or any rule or
558 regulation promulgated pursuant to this article or any provision
559 of Title 75, Chapter 17, of the Mississippi Code of 1972, or for
560 contracting for or receiving, or participating in contracting for
561 or receiving, other charges by false, misleading, deceptive or
562 fraudulent means, or in violation of any applicable statutory or
563 common law duty, or which are otherwise unlawful.

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



568 **SECTION 17.** Section 75-17-25, Mississippi Code of 1972, is
569 amended as follows:

570 75-17-25. (1) The term "finance charge" as used in this
571 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
572 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
573 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
574 payable, directly or indirectly, by a debtor for receiving a loan
575 or incident to or as a condition of the extension of credit,
576 including, but not limited to, interest, brokerage fees, finance
577 charges, loan fees, discount, points, service charges, transaction
578 charges, activity charges, carrying charges, time price
579 differential, finders fees or any other cost or expense to the
580 debtor for services rendered or to be rendered to the debtor in
581 making, arranging or negotiating a loan of money or an extension
582 of credit and for the accounting, guaranteeing, endorsing,
583 collecting and other actual services rendered by the lender;
584 provided, however, that recording fees, motor vehicle title fees,
585 attorney's fees, insurance premiums, fees permitted to be charged
586 under the provisions of Section 79-7-7, service charges as
587 provided in Section 81-19-31, and with respect to a debt secured
588 by an interest in land, bona fide closing costs and appraisal fees
589 incidental to the transaction shall not be included in the finance
590 charge.

591 (2) Subject to the other provisions of this section,
592 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
593 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
594 75-67-127 and 75-67-217, the finance charge may be calculated on
595 the assumption that the indebtedness will be discharged as it
596 becomes due, and prepayment penalties and statutory default
597 charges shall not be included in the finance charge. Nothing in
598 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,
599 75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner
600 of contracting for such finance charge, whether by way of add-on,



601 discount or otherwise, so long as the annual percentage rate does
602 not exceed that permitted by law. If a greater finance charge
603 than that authorized by applicable law shall be stipulated for or
604 received in any case, all interest and finance charge shall be
605 forfeited, and may be recovered back, whether the contract be
606 executed or executory. If a finance charge be contracted for or
607 received that exceeds the maximum authorized by law by more than
608 one hundred percent (100%), the principal and all finance charges
609 shall be forfeited and any amount paid may be recovered by suit.
610 The provisions of this section, Section 75-17-1 and Sections
611 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
612 shall not restrict the extension of credit pursuant to any other
613 applicable law. A licensee under the Small Loan Regulatory Law
614 (Sections 75-67-101 through 75-67-135), and the Small Loan
615 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may
616 contract for and receive finance charges as authorized by Section
617 75-17-21, and the late payment charge as authorized by Section
618 75-17-27, regardless of the purpose for which the loan or other
619 extension of credit is made.

620 (3) If in connection with a consumer loan any person
621 contracts for or receives, or participates in contracting for or
622 receiving, other charges by false, misleading, deceptive or
623 fraudulent means, or in violation of any applicable statutory or
624 common law duty, or which are otherwise unlawful, all such
625 unlawful other charges shall be forfeited and may be recovered,
626 whether the contract be executed or executory. If the other
627 charges subject to forfeiture under this section exceed Five
628 Hundred Dollars (\$500.00), all finance charges shall additionally
629 be forfeited and may be recovered. If the other charges subject
630 to forfeiture under this section exceed One Thousand Five Hundred
631 Dollars (\$1,500.00), all principal shall additionally be forfeited
632 and may be recovered.



633 The remedies and penalties provided in this section shall be
634 the exclusive remedies and penalties for contracting for or
635 receiving any finance charge in excess of that permitted by
636 applicable law or for contracting for or receiving, or
637 participating in contracting for or receiving, other charges by
638 false, misleading, deceptive or fraudulent means, or in violation
639 of any applicable statutory or common law duty, or which are
640 otherwise unlawful.

641 As used in this subsection (3), the term "consumer loan"
642 shall mean any loan or extension of credit offered or extended
643 primarily for personal, family or household purposes; and the term
644 "other charges" shall mean any amounts contracted for or received
645 by any person in connection with a consumer loan, other than
646 finance charges as defined in this section.

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

650 **SECTION 19.** This act shall take effect and be in force from
651 and after its passage, and shall apply to all causes of action
652 pending on or filed after that date.

