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To: Select Senate Cmte on
Civil Justice Syst

SENATE BILL NO. 2011
(As Passed the Senate)

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 AND TO
19 PROVIDE THAT 50% OF AN AWARD FOR PUNITIVE DAMAGES SHALL BE
20 DEPOSITED INTO THE STATE GENERAL FUND; TO LIMIT THE LIABILITY OF
21 THE SPONSOR OF AN EVENT IN THE CASE OF A CIVIL ACTION ARISING OUT
22 OF ACTIVITIES OCCURRING ON THE PREMISES OF THE LOCATION WHERE THE
23 EVENT IS HELD OR CONDUCTED, PROVIDED THAT THE SPONSOR DOES NOT
24 EXERCISE CONTROL OVER ANY ASPECT OF THE EVENT OTHER THAN ACTING AS
25 SPONSOR; TO DEFINE THE TERMS "SPONSOR" AND "EVENT"; TO PROVIDE
26 THAT THIS LIMITATION OF LIABILITY SHALL NOT EXTEND TO WILLFUL ACTS
27 OR GROSS NEGLIGENCE ON THE PART OF A SPONSOR; TO AMEND SECTION
28 67-3-73, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THERE IS NO
29 LIABILITY TO A WHOLESALER OF BEER AND LIGHT WINE FOR THE LAWFUL
30 DISTRIBUTION TO A RETAIL PERMITTEE; TO PROVIDE IMMUNITY FOR A
31 PREMISES OWNER UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE THAT CIVIL
32 ACTIONS SHALL NOT BE ASSIGNED TO A JUDGE UNTIL AT LEAST ONE
33 DEFENDANT HAS FILED A RESPONSIVE PLEADING; TO PROHIBIT RECOVERY OF
34 HEDONIC DAMAGES IN CIVIL ACTIONS; TO PROVIDE THAT PAYMENTS FROM
35 COLLATERAL SOURCES SHALL BE REDUCED FROM AWARDS IN CIVIL ACTIONS;
36 TO AMEND SECTION 75-67-103, MISSISSIPPI CODE OF 1972, TO REVISE
37 THE DEFINITIONS UNDER THE SMALL LOAN REGULATORY LAW TO INCLUDE A
38 DEFINITION OF THE TERM "OTHER CHARGES"; TO AMEND SECTIONS
39 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO PROVIDE THE
40 REMEDY FOR CONTRACTING FOR AND RECEIVING UNLAWFUL OTHER CHARGES;
41 TO PROVIDE THAT THE AUTHORITY TO SUE ANY FIREARMS OR AMMUNITION
42 MANUFACTURER, DISTRIBUTOR OR DEALER ON BEHALF OF LOCAL
43 GOVERNMENTAL ENTITIES FOR CERTAIN CAUSES OF ACTION SHALL BE
44 EXCLUSIVELY RESERVED TO THE STATE; TO REPEAL SECTIONS 11-3-23 AND
45 11-3-25, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
46 ASSESSMENT OF A PENALTY ON CERTAIN JUDGMENTS APPEALED TO THE
47 SUPREME COURT; AND FOR RELATED PURPOSES.

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



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

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

61 * * *

62 **SECTION 2.** Sections 11-11-5, 11-11-7, 11-11-11 and 11-11-13,
63 Mississippi Code of 1972, which provide venue in actions against
64 nonresidents, nonresident motorists, railroads and insurance
65 companies, are hereby repealed.

66 **SECTION 3.** The following shall be codified as Section
67 11-1-64, Mississippi Code of 1972:

68 11-1-64. (1) In any civil action alleging damages caused by
69 a product, a product seller other than a manufacturer shall not be
70 liable for a latent defect if the seller is a mere conduit who
71 purchased the product from a reputable manufacturer. It is the
72 intent of this section to insulate innocent sellers who are not
73 actively negligent from forum driven lawsuits.

74 (2) A product seller shall not be considered to have failed
75 to exercise reasonable care with respect to a product, based upon
76 an alleged failure to inspect the product, if there was no
77 reasonable opportunity to inspect the product; or the inspection,
78 in the exercise of reasonable care, would not have revealed that
79 the product was defective.



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

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

85 11-1-63. In any action for damages caused by a product
86 except for commercial damage to the product itself:

87 (a) Subject to the provisions of Section 11-1-64, the
88 manufacturer or seller of the product shall not be liable if the
89 claimant does not prove by the preponderance of the evidence that
90 at the time the product left the control of the manufacturer or
91 seller:

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

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

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

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

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

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

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



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

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

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

139 (d) In any action alleging that a product is defective
140 pursuant to paragraph (a) of this section, the manufacturer or
141 seller shall not be liable if the claimant (i) had knowledge of a
142 condition of the product that was inconsistent with his safety;
143 (ii) appreciated the danger in the condition; and (iii)
144 deliberately and voluntarily chose to expose himself to the danger



145 in such a manner to register assent on the continuance of the
146 dangerous condition.

147 (e) In any action alleging that a product is defective
148 pursuant to paragraph (a)(i)2 of this section, the manufacturer or
149 seller shall not be liable if the danger posed by the product is
150 known or is open and obvious to the user or consumer of the
151 product, or should have been known or open and obvious to the user
152 or consumer of the product, taking into account the
153 characteristics of, and the ordinary knowledge common to, the
154 persons who ordinarily use or consume the product.

155 (f) In any action alleging that a product is defective
156 because of its design pursuant to paragraph (a)(i)3 of this
157 section, the manufacturer or product seller shall not be liable if
158 the claimant does not prove by the preponderance of the evidence
159 that at the time the product left the control of the manufacturer
160 or seller:

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

165 (ii) The product failed to function as expected
166 and there existed a feasible design alternative that would have to
167 a reasonable probability prevented the harm. A feasible design
168 alternative is a design that would have to a reasonable
169 probability prevented the harm without impairing the utility,
170 usefulness, practicality or desirability of the product to users
171 or consumers.

172 (g) (i) The manufacturer of a product who is found
173 liable for a defective product pursuant to paragraph (a) shall
174 indemnify a product seller for the costs of litigation, any
175 reasonable expenses, reasonable attorney's fees and any damages
176 awarded by the trier of fact unless the seller exercised
177 substantial control over that aspect of the design, testing,



178 manufacture, packaging or labeling of the product that caused the
179 harm for which recovery of damages is sought; the seller altered
180 or modified the product, and the alteration or modification was a
181 substantial factor in causing the harm for which recovery of
182 damages is sought; the seller had actual knowledge of the
183 defective condition of the product at the time he supplied same;
184 or the seller made an express factual representation about the
185 aspect of the product which caused the harm for which recovery of
186 damages is sought.

187 (ii) Subparagraph (i) shall not apply unless the
188 seller has given prompt notice of the suit to the manufacturer
189 within thirty (30) days of the filing of the complaint against the
190 seller.

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

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

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

204 * * *

205 (2) Except as may be otherwise provided in subsection (4) of
206 this section, in any civil action based on fault, the liability
207 for damages caused by two (2) or more persons shall be several
208 only, and not joint and several and a joint tort-feasor shall be
209 liable only for the amount of damages allocated to him in direct
210 proportion to his percentage of fault. In assessing percentages



211 of fault, an employer and the employer's employee or a principal
212 and the principal's agent shall be considered as one (1) defendant
213 when the liability of such employer or principal has been caused
214 by the wrongful or negligent act or omission of the employee or
215 agent.

216 * * *

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

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

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

233 * * *

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

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

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

242 (a) "Noneconomic damages" means subjective,
243 nonpecuniary damages arising from death, pain, suffering,



244 inconvenience, mental anguish, worry, emotional distress, loss of
245 society and companionship, loss of consortium, bystander injury,
246 physical impairment, injury to reputation, humiliation,
247 embarrassment, * * * other nonpecuniary damages, and any other
248 theory of damages such as fear of loss, illness or injury. The
249 term "noneconomic damages" shall not include damages for
250 disfigurement, nor does it include punitive or exemplary damages.

251 (b) "Actual economic damages" means objectively
252 verifiable pecuniary damages arising from medical expenses and
253 medical care, rehabilitation services, custodial care,
254 disabilities, loss of earnings and earning capacity, loss of
255 income, burial costs, loss of use of property, costs of repair or
256 replacement of property, costs of obtaining substitute domestic
257 services, loss of employment, loss of business or employment
258 opportunities, and other objectively verifiable monetary losses.

259 * * *

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

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

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

270 (iii) For claims for causes of action filed on or
271 after July 1, 2017, the sum of One Million Dollars
272 (\$1,000,000.00).

273 (b) The jury shall not be advised of the limitations
274 imposed by this subsection (2) and the judge shall appropriately
275 reduce any award of noneconomic damages that exceeds the
276 applicable limitation.



277 * * *

278 (3) Nothing in this section shall be construed to impose a
279 limitation on damages for disfigurement or actual economic
280 damages.

281 (4) Whether an element of damages may or may not be
282 recovered in any action shall not be governed by the provisions of
283 this section, but shall be governed by applicable statutory or
284 common law.

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

287 11-1-65. (1) In any action in which punitive damages are
288 sought:

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

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

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

302 (d) The court shall determine whether the issue of
303 punitive damages may be submitted to the trier of fact; and, if
304 so, the trier of fact shall determine whether to award punitive
305 damages and in what amount.

306 (e) In all cases involving an award of punitive
307 damages, the fact finder, in determining the amount of punitive
308 damages, shall consider, to the extent relevant, the following:
309 the defendant's financial condition and net worth; the nature and



310 reprehensibility of the defendant's wrongdoing, for example, the
311 impact of the defendant's conduct on the plaintiff, or the
312 relationship of the defendant to the plaintiff; the defendant's
313 awareness of the amount of harm being caused and the defendant's
314 motivation in causing such harm; the duration of the defendant's
315 misconduct and whether the defendant attempted to conceal such
316 misconduct; and any other circumstances shown by the evidence that
317 bear on determining a proper amount of punitive damages. The
318 trier of fact shall be instructed that the primary purpose of
319 punitive damages is to punish the wrongdoer and deter similar
320 misconduct in the future by the defendant and others while the
321 purpose of compensatory damages is to make the plaintiff whole.

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

327 (ii) In determining whether the award is
328 excessive, the court shall take into consideration the following
329 factors:

330 1. Whether there is a reasonable relationship
331 between the punitive damage award and the harm likely to result
332 from the defendant's conduct as well as the harm that actually
333 occurred;

334 2. The degree of reprehensibility of the
335 defendant's conduct, the duration of that conduct, the defendant's
336 awareness, any concealment, and the existence and frequency of
337 similar past conduct;

338 3. The financial condition and net worth of
339 the defendant; and

340 4. In mitigation, the imposition of criminal
341 sanctions on the defendant for its conduct and the existence of
342 other civil awards against the defendant for the same conduct.



343 (g) Fifty percent (50%) of any award for punitive
344 damages in civil actions shall be payable to the state and fifty
345 percent (50%) to the individual plaintiff or plaintiffs who bring
346 the suit. The state's portion of the damage award shall be
347 deposited by the clerk of the court into the State General Fund
348 with a pro rata portion of attorney's fees and costs to be
349 deducted from the state's portion.

350 (2) The seller of a product other than the manufacturer
351 shall not be liable for punitive damages unless the seller
352 exercised substantial control over that aspect of the design,
353 testing, manufacture, packaging or labeling of the product that
354 caused the harm for which recovery of damages is sought; the
355 seller altered or modified the product, and the alteration or
356 modification was a substantial factor in causing the harm for
357 which recovery of damages is sought; the seller had actual
358 knowledge of the defective condition of the product at the time he
359 supplied same; or the seller made an express factual
360 representation about the aspect of the product which caused the
361 harm for which recovery of damages is sought.

362 (3) In all civil actions where an entitlement to punitive
363 damages shall have been established under applicable laws, no
364 award of punitive damages shall exceed the greater of three (3)
365 times the amount of the total compensatory damages awarded to the
366 plaintiff in an action or Three Million Dollars (\$3,000,000.00);
367 however, if the defendant is an individual or a business with less
368 than fifty (50) full-time employees, an award of punitive damages
369 shall not exceed two (2) times the amount of the plaintiff's
370 compensatory damages or Two Million Dollars (\$2,000,000.00) or
371 three percent (3%) of such defendant's net worth, whichever is
372 less, unless the finder of fact and court find by clear and
373 convincing evidence that the defendant acted with criminal intent
374 to cause serious physical bodily injury. This restriction shall



375 not be disclosed to the trier of fact, but shall be applied by the
376 court to any punitive damages verdict.

377 (4) Nothing herein shall be construed as creating a right to
378 an award of punitive damages or to limit the duty of the court, or
379 the appellate courts, to scrutinize all punitive damage awards,
380 ensure that all punitive damage awards comply with applicable
381 procedural, evidentiary and constitutional requirements, and to
382 order remittitur where appropriate.

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

385 (a) Contracts;

386 (b) Libel and slander; or

387 (c) Causes of action for persons and property arising
388 out of asbestos.

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

392 (a) "Sponsor" means any person, corporation or legal
393 entity which, for charitable purposes or to promote good will in
394 the community, (i) sells, rents, manufactures or provides
395 products, equipment or promotional materials, or (ii) donates or
396 contributes money or fees in order that an event may be held or
397 conducted.

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

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



407 (b) No sponsor shall be liable to a person who may
408 lawfully consume any intoxicating beverage for any injury suffered
409 by such person, or by any other person, off the premises of the
410 event, including wrongful death and property damage, because of
411 the intoxication of the person to whom the intoxicating beverages
412 were served or furnished when on the premises of the event.

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

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

421 67-3-73. (1) The Mississippi Legislature finds and declares
422 that the consumption of intoxicating beverages, rather than the
423 sale or serving or furnishing of such beverages, is the proximate
424 cause of any injury, including death and property damage,
425 inflicted by an intoxicated person upon himself or upon another
426 person.

427 (2) Notwithstanding any other law to the contrary, no holder
428 of an alcoholic beverage, beer or light wine permit, or any agent
429 or employee of such holder, who lawfully sells or serves
430 intoxicating beverages to a person who may lawfully purchase such
431 intoxicating beverages, shall be liable to such person or to any
432 other person or to the estate, or survivors of either, for any
433 injury suffered off the licensed premises, including wrongful
434 death and property damage, because of the intoxication of the
435 person to whom the intoxicating beverages were sold or served.

436 (3) Notwithstanding any other law to the contrary, no social
437 host who serves or furnishes any intoxicating beverage to a person
438 who may lawfully consume such intoxicating beverage shall be
439 liable to such person or to any other person or to the estate, or



440 survivors of either, for any injury suffered off such social
441 host's premises, including wrongful death and property damage,
442 because of the intoxication of the person to whom the intoxicating
443 beverages were served or furnished. No social host who owns,
444 leases or otherwise lawfully occupies a premises on which, in his
445 absence and without his consent, intoxicating beverages are
446 consumed by a person who may lawfully consume such intoxicating
447 beverage shall be liable to such person or to any other person or
448 to the estate, or survivors of either, for any injury suffered off
449 the premises, including wrongful death and property damage,
450 because of the intoxication of the person who consumed the
451 intoxicating beverages.

452 (4) The limitation of liability provided by this section
453 shall not apply to any person who causes or contributes to the
454 consumption of alcoholic beverages by force or by falsely
455 representing that a beverage contains no alcohol, or to any holder
456 of an alcoholic beverage, beer or light wine permit, or any agent
457 or employee of such holder when it is shown that the person making
458 a purchase of an alcoholic beverage was at the time of such
459 purchase visibly intoxicated.

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

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

468 **SECTION 11.** Civil actions in circuit, chancery and county
469 court shall not be assigned to a judge until at least one (1)
470 defendant has filed a responsive pleading. However, any necessary
471 preliminary matters may be decided by a judge on a separate



472 rotating basis before assignment of the action to a particular
473 judge.

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

479 **SECTION 13.** On motion by a defendant or upon its own motion,
480 the court shall hear evidence of any amount of such damages
481 incurred prior to the judgment which the defendant or defendants
482 claim was replaced, compensated or indemnified pursuant to the
483 United States Social Security Act, any state or federal
484 income-disability act, any health, sickness or income-disability
485 insurance, any accident insurance that provides health benefits or
486 income-disability coverage, any contract or agreement of any
487 group, organization, partnership, or corporation to provide, pay
488 for or reimburse the cost of medical, hospital, dental or other
489 health care services, any contract or agreement to continue to
490 pay, in whole or in part, the plaintiff's wages or income, or any
491 other collateral source of benefits whatsoever. If the defendant
492 elects to introduce such evidence, the plaintiff may introduce
493 evidence of any amount the plaintiff himself paid or contributed
494 to secure his right to the benefits concerning which the defendant
495 has introduced evidence. The plaintiff may also introduce
496 evidence of any leave time lost due to the personal injury. The
497 presiding judge shall reduce the jury award by the amount of such
498 benefits less any amount which the plaintiff has paid or
499 contributed to secure such benefits. There shall be no reduction
500 for collateral sources for which a subrogation or reimbursement
501 right exists. Such reduction shall be offset to the extent of any
502 amount which has been paid, contributed, or forfeited by, or on
503 behalf of, the claimant or members of the claimant's immediate



504 family to secure her or his right to any collateral source benefit
505 which the claimant is receiving as a result of her or his injury.

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

508 75-67-103. The following words and phrases, when used in
509 this article, shall, for the purposes of this article, have the
510 meanings respectively ascribed to them in this section, except
511 where the context clearly describes and indicates a different
512 meaning:

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

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

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

530 (d) "Commissioner" means the Commissioner of Banking
531 and Consumer Finance of the State of Mississippi.

532 (e) "Department" means the Department of Banking and
533 Consumer Finance of the State of Mississippi.

534 (f) "Records" or "documents" means any item in hard
535 copy or produced in a format of storage commonly described as
536 electronic, imaged, magnetic, microphotographic or otherwise, and



537 any reproduction so made shall have the same force and effect as
538 the original thereof and be admitted in evidence equally with the
539 original.

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

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

545 75-67-119. (1) If any finance charge in excess of that
546 expressly permitted by Section 75-17-21 is contracted for or
547 received, all finance charges and other charges shall be forfeited
548 and may be recovered, whether the contract be executed or
549 executory. If any finance charge is contracted for or received
550 that exceeds the maximum finance charge authorized by law by more
551 than one hundred percent (100%), the principal and all finance
552 charges and other charges shall be forfeited and any amount paid
553 may be recovered by suit; and, in addition, the licensee and the
554 several members, officers, directors, agents, and employees
555 thereof who shall have participated in such violation shall be
556 guilty of a misdemeanor and, upon conviction thereof, shall be
557 punished by a fine of not more than One Thousand Dollars
558 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
559 the discretion of the court; and, further, the Commissioner of
560 Banking and Consumer Finance shall forthwith cite such licensee to
561 show cause why its license should not be revoked and proceedings
562 thereon shall be as is specifically provided in the Small Loan
563 Privilege Tax Law (Sections 75-67-201 through 75-67-243).

564 (2) If any licensee or other person violates any provision
565 of this article or any rule or regulation promulgated pursuant to
566 this article or any provision of Title 75, Chapter 17, of the
567 Mississippi Code of 1972, or contracts for or receives, or
568 participates in contracting for or receiving, other charges in
569 violation of any applicable statutory or common law duty, or which



570 are otherwise unlawful for any reason, all such other charges
571 shall be forfeited and may be recovered, whether the contract be
572 executed or executory. If the other charges subject to forfeiture
573 under this section exceed Five Hundred Dollars (\$500.00), all
574 finance charges shall additionally be forfeited and may be
575 recovered. If the other charges subject to forfeiture under this
576 section exceed One Thousand Five Hundred Dollars (\$1,500.00), all
577 principal shall additionally be forfeited and may be recovered.

578 If the other charges subject to forfeiture under this section
579 are found by the trier of fact and the court to have been
580 contracted for or received as a result of fraud, then an award of
581 three (3) times the other charges subject to forfeiture or One
582 Thousand Dollars (\$1,000.00), whichever is greater, plus
583 reasonable attorney's fees may be made in addition to the
584 penalties provided in this subsection.

585 (3) The right to recover the penalties provided in
586 subsection (2) shall accrue only after: (a) written notice of the
587 violation is given to the licensee by certified mail addressed to
588 the licensee's place of business as shown in the credit
589 transaction documents or such notice is given by certified mail to
590 the licensee's agent for service of process; and (b) thirty (30)
591 days have elapsed since receipt of such notice by the licensee and
592 the violation has not been corrected by refund or by credit to the
593 borrower's remaining obligation. In the case of multiple
594 violations involving a common violation affecting more than one
595 hundred (100) borrowers, the licensee must notify the commissioner
596 and correct the violation as to each affected borrower within
597 thirty (30) days after receipt of a borrower notice, but the
598 commissioner may extend the time for correction for good reason.
599 The penalties provided for in subsection (2) shall not apply if it
600 is proven by a preponderance of the evidence that the violation
601 was not intentional and resulted from a bona fide error
602 notwithstanding the maintenance of procedures reasonably adapted



603 to avoid any such error, except that the licensee may be required
604 to correct the error by refund or credit to the borrower's
605 remaining obligation. Failure to refund or give credit for an
606 unlawful other charge within thirty (30) days after receipt of a
607 borrower notice or, in the case of multiple violations, failure to
608 give the commissioner the required notice within the specified
609 time, shall give rise to a rebuttable presumption that the
610 violation was not the result of a bona fide error for purposes of
611 this subsection. The penalties provided for in subsection (2)
612 shall not apply if the licensee discovers the problem itself or is
613 notified of the problem by the commissioner and within sixty (60)
614 days after discovering the violation, and prior to the receipt of
615 written notice of the violation from the borrower as provided
616 herein, the licensee notifies the affected borrower of the
617 violation and either refunds or gives credit for the unlawful
618 other charge.

619 (4) Except as provided in subsection (5) of this section,
620 the remedies and penalties provided in this section shall be the
621 exclusive remedies and penalties for all claims against a licensee
622 or any other person for contracting for or receiving any finance
623 charge in excess of that expressly permitted by Section 75-17-21,
624 or for violation of any provision of this article or any rule or
625 regulation promulgated pursuant to this article or any provision
626 of Title 75, Chapter 17, of the Mississippi Code of 1972, or for
627 contracting for or receiving, or participating in contracting for
628 or receiving, other charges in violation of any applicable
629 statutory or common law duty, or which are otherwise unlawful.

630 (5) The remedies and penalties provided in this section are
631 supplemental to the defense provided in Section 75-67-127(3) and
632 to the enforcement powers conferred upon the Commissioner of
633 Banking and Consumer Finance.

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



636 75-17-25. (1) The term "finance charge" as used in this
637 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
638 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
639 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
640 payable, directly or indirectly, by a debtor for receiving a loan
641 or incident to or as a condition of the extension of credit,
642 including, but not limited to, interest, brokerage fees, finance
643 charges, loan fees, discount, points, service charges, transaction
644 charges, activity charges, carrying charges, time price
645 differential, finders fees or any other cost or expense to the
646 debtor for services rendered or to be rendered to the debtor in
647 making, arranging or negotiating a loan of money or an extension
648 of credit and for the accounting, guaranteeing, endorsing,
649 collecting and other actual services rendered by the lender;
650 provided, however, that recording fees, motor vehicle title fees,
651 attorney's fees, insurance premiums, fees permitted to be charged
652 under the provisions of Section 79-7-7, service charges as
653 provided in Section 81-19-31, and with respect to a debt secured
654 by an interest in land, bona fide closing costs and appraisal fees
655 incidental to the transaction shall not be included in the finance
656 charge.

657 (2) Subject to the other provisions of this section,
658 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
659 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
660 75-67-127 and 75-67-217, the finance charge may be calculated on
661 the assumption that the indebtedness will be discharged as it
662 becomes due, and prepayment penalties and statutory default
663 charges shall not be included in the finance charge. Nothing in
664 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,
665 75-17-27, 75-17-29, or 75-17-33 shall limit or restrict the manner
666 of contracting for such finance charge, whether by way of add-on,
667 discount or otherwise, so long as the annual percentage rate does
668 not exceed that permitted by law. If a greater finance charge



669 than that authorized by applicable law shall be stipulated for or
670 received in any case, all interest and finance charge shall be
671 forfeited, and may be recovered back, whether the contract be
672 executed or executory. If a finance charge be contracted for or
673 received that exceeds the maximum authorized by law by more than
674 one hundred percent (100%), the principal and all finance charges
675 shall be forfeited and any amount paid may be recovered by suit.
676 The provisions of this section, Section 75-17-1 and Sections
677 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
678 shall not restrict the extension of credit pursuant to any other
679 applicable law. A licensee under the Small Loan Regulatory Law
680 (Sections 75-67-101 through 75-67-135), and the Small Loan
681 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may
682 contract for and receive finance charges as authorized by Section
683 75-17-21, and the late payment charge as authorized by Section
684 75-17-27, regardless of the purpose for which the loan or other
685 extension of credit is made.

686 (3) If in connection with a consumer loan any person
687 contracts for or receives, or participates in contracting for or
688 receiving, other charges in violation of any applicable statutory
689 or common law duty, or which are otherwise unlawful for any
690 reason, all such other charges shall be forfeited and may be
691 recovered, whether the contract be executed or executory. If the
692 other charges subject to forfeiture under this section exceed Five
693 Hundred Dollars (\$500.00), all finance charges shall additionally
694 be forfeited and may be recovered. If the other charges subject
695 to forfeiture under this section exceed One Thousand Five Hundred
696 Dollars (\$1,500.00), all principal shall additionally be forfeited
697 and may be recovered.

698 If the other charges subject to forfeiture under this section
699 are found by the trier of fact and the court to have been
700 contracted for or received as a result of fraud, then an award of
701 three (3) times the other charges subject to forfeiture or One



702 Thousand Dollars (\$1,000.00), whichever is greater, plus
703 reasonable attorney's fees may be made in addition to the
704 penalties provided in this subsection.

705 The right to recover the penalties provided in this
706 subsection (3) shall accrue only after: (a) written notice of the
707 violation is given to the lender by certified mail addressed to
708 the lender's place of business as shown in the credit transaction
709 documents or such notice is given by certified mail to the
710 lender's agent for service of process; and (b) thirty (30) days
711 have elapsed since receipt of such notice by the lender and the
712 violation has not been corrected by refund or by credit to the
713 consumer's remaining obligation. In the case of multiple
714 violations involving a common violation affecting more than one
715 hundred (100) consumers, the lender must notify the Commissioner
716 of Banking and Consumer Finance and correct the violation as to
717 each affected consumer within thirty (30) days after receipt of a
718 consumer notice, but the commissioner may extend the time for
719 correction for good reason. The penalties provided for in this
720 subsection shall not apply if it is proven by a preponderance of
721 the evidence that the violation was not intentional and resulted
722 from a bona fide error notwithstanding the maintenance of
723 procedures reasonably adapted to avoid any such error, except that
724 the lender may be required to correct the error by refund or
725 credit to the consumer's remaining obligation. Failure to refund
726 or give credit for an unlawful other charge within thirty (30)
727 days after receipt of a consumer notice or, in the case of
728 multiple violations, failure to give the commissioner the required
729 notice within the specified time, shall give rise to a rebuttable
730 presumption that the violation was not the result of a bona fide
731 error for purposes of this subsection. The penalties provided for
732 in this subsection shall not apply if the lender discovers the
733 problem itself or is notified of the problem by the commissioner
734 and within sixty (60) days after discovering the violation, and



735 prior to the receipt of written notice of the violation from the
736 consumer as provided herein, the lender notifies the affected
737 consumer of the violation and either refunds or gives credit for
738 the unlawful other charge.

739 The remedies and penalties provided in this section shall be
740 the exclusive remedies and penalties for contracting for or
741 receiving any finance charge in excess of that permitted by
742 applicable law or for contracting for or receiving, or
743 participating in contracting for or receiving, other charges in
744 violation of any applicable statutory or common law duty, or which
745 are otherwise unlawful.

746 As used in this subsection (3), the term "consumer loan"
747 shall mean any loan or extension of credit offered or extended
748 primarily for personal, family or household purposes; and the term
749 "other charges" shall mean any amounts contracted for or received
750 by any person in connection with a consumer loan, other than
751 finance charges as defined in this section.

752 **SECTION 17.** (1) The authority to bring an action against
753 any firearms or ammunition manufacturer, distributor or dealer
754 duly licensed under federal law on behalf of any governmental
755 entity created by or pursuant to an act of the Mississippi
756 Legislature or the Mississippi Constitution of 1890, or any
757 department, agency or authority thereof, for damages, abatement,
758 injunctive relief or any other relief or remedy resulting from or
759 relating to the lawful design, manufacture, distribution or sale
760 of firearms, firearm components, silencers, ammunition or
761 ammunition components to the public, shall be exclusively reserved
762 to the state. This section shall not prohibit a political
763 subdivision from bringing an action against a firearm or
764 ammunition manufacturer, distributor or dealer for breach of
765 contract or warranty as to firearms or ammunition purchased by the
766 political subdivision, or for injuries resulting from a firearm
767 malfunction due to defects in materials or workmanship.



768 (2) "Political subdivision" and "governmental entity" shall
769 have the meanings ascribed in Section 11-46-1.

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

773 **SECTION 19.** This act shall take effect and be in force from
774 and after January 1, 2003, and shall apply to all causes of action
775 filed after that date.

