

By: Senator(s) Turner

To: Select Senate Cmte on
Civil Justice Syst

SENATE BILL NO. 2012

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE VENUE; TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972,
3 TO REVISE THE LIMITATION OF JOINT AND SEVERAL LIABILITY FOR
4 DAMAGES CAUSED BY TWO OR MORE DEFENDANTS; TO PROVIDE A LIMITATION
5 ON THE AWARD OF HEDONIC DAMAGES; TO REVISE THE AMOUNT OF AN APPEAL
6 BOND; TO ENACT A COLLATERAL SOURCE RULE; TO PROVIDE IMMUNITY TO AN
7 INNOCENT PREMISES OWNER FOR THE CRIMINAL ACTS OF THIRD PARTIES; TO
8 CAP HEDONIC DAMAGES; AND FOR RELATED PURPOSES.

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

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

13 11-11-3. (1) Civil actions of which the circuit court has
14 original jurisdiction shall be commenced in the county in which
15 the alleged act or omission occurred, except where otherwise
16 provided, and except actions of trespass on land, ejectment and
17 actions for the statutory penalty for cutting and boxing trees and
18 firing woods and actions for the actual value of trees cut which
19 shall be brought in the county where the land or some part thereof
20 is situated.

21 * * *

22 (2) If a civil action is brought in an improper county, such
23 action may be transferred to the proper county pursuant to Section
24 11-11-17.

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

28 85-5-7. (1) As used in this section "fault" means an act or
29 omission of a person which is a proximate cause of injury or death
30 to another person or persons, damages to property, tangible or



31 intangible, or economic injury, including, but not limited to,
32 negligence, malpractice, strict liability, absolute liability or
33 failure to warn. "Fault" shall not include any tort which results
34 from an act or omission committed with a specific wrongful intent.

35 (2) Except as may be otherwise provided in subsections (6)
36 and (8) of this section, in any civil action based on fault, the
37 liability for damages caused by two (2) or more persons shall be
38 joint and several only to the extent necessary for the person
39 suffering injury, death or loss to recover fifty percent (50%) of
40 his recoverable damages if the defendant's fault is determined to
41 be thirty percent (30%) or more. For any defendant whose fault is
42 determined to be less than thirty percent (30%), liability shall
43 be several only.

44 (3) Except as otherwise provided in subsections (2) and (6)
45 of this section, in any civil action based on fault, the liability
46 for damages caused by two (2) or more persons shall be several
47 only, and not joint and several and a joint tort-feasor shall be
48 liable only for the amount of damages allocated to him in direct
49 proportion to his percentage of fault. In assessing percentages
50 of fault an employer and the employer's employee or a principal
51 and the principal's agent shall be considered as one (1) defendant
52 when the liability of such employer or principal has been caused
53 by the wrongful or negligent act or omission of the employee or
54 agent.

55 (4) Any defendant held jointly liable under this section
56 shall have a right of contribution against fellow joint
57 tort-feasors. A defendant shall be held responsible for
58 contribution to other joint tort-feasors only for the percentage
59 of fault assessed to such defendant.

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



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

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

72 (8) Except as provided in subsection (6) of this section, in
73 any action against a licensed physician, psychologist, osteopath,
74 dentist, nurse, nurse practitioner, physician assistant,
75 pharmacist, podiatrist, optometrist, chiropractor, hospital,
76 institution for the aged or infirm, or licensed pharmacy,
77 including any legal entity which may be liable for their acts or
78 omissions, for malpractice, negligence, error, omission, mistake
79 or the unauthorized rendering of professional services which
80 involve joint tort-feasors, the trier of fact shall determine the
81 percentage of fault for each joint tort-feasor, including named
82 parties and absent tort-feasors, without regard to whether the
83 joint tort-feasor is immune from damages. For noneconomic
84 damages, a defendant's liability shall be several only. For
85 economic damages, for any defendant whose fault is determined to
86 be less than thirty percent (30%), liability shall be several only
87 and for any defendant whose fault is determined to be thirty
88 percent (30%) or more, liability shall be joint and several only
89 to the extent necessary for the person suffering injury, death or
90 loss to recover fifty percent (50%) of his recoverable damages.
91 Fault allocated under this subsection to an immune tort-feasor or
92 a tort-feasor whose liability is limited by law shall not be
93 reallocated to any other tort-feasor.



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

SECTION 3. Section 11-3-23, Mississippi Code of 1972, is amended as follows:

11-3-23. In case the judgment or decree of the court below be affirmed, or the appellant fails to prosecute his appeal to effect, the Supreme Court shall render judgment against the appellant for damages, at the rate of ten percent (10%), as follows: If the judgment or decree affirmed be for a sum of money, the damages shall be upon such sum. If the judgment or decree be for the possession of real or personal property, the damages shall be assessed on the value of the property. If the judgment or decree be for the dissolution of an injunction or other restraining process at law or in chancery, the damages shall be computed on the amount due the appellee which was enjoined or restrained. If the judgment or decree be for the dissolution of an injunction or other restraining process as to certain property, real or personal, or a certain interest in property, or be a judgment or decree for the sale of property, or some interest in it, to satisfy a sum out of the proceeds of sale, or to enforce or establish a lien or charge or claim upon or some interest in property, and the only matter complained of on the appeal is the decree as to some particular property or claim on it, the damages shall be computed on the value of the property or the interest in it, if the value of the property or interest in it be less than the judgment or decree against it; but if the value of the property or interest in it be greater than the amount of the judgment or decree against it, the damages shall be upon the amount of the judgment or decree; provided, however, the above penalty shall not be assessed against any condemnee appealing from a special court of eminent domain in any circumstances.



126 **SECTION 4.** On motion by a defendant or upon its own motion,
127 the court shall hear evidence of any amount of such damages
128 incurred prior to the judgment which the defendant or defendants
129 claim was replaced, compensated or indemnified pursuant to the
130 United States Social Security Act, any state or federal
131 income-disability act, any health, sickness or income-disability
132 insurance, any accident insurance that provides health benefits or
133 income-disability coverage, any contract or agreement of any
134 group, organization, partnership, or corporation to provide, pay
135 for or reimburse the cost of medical, hospital, dental or other
136 health care services, any contract or agreement to continue to
137 pay, in whole or in part, the plaintiff's wages or income, or any
138 other collateral source of benefits whatsoever. If the defendant
139 elects to introduce such evidence, the plaintiff may introduce
140 evidence of any amount the plaintiff himself paid or contributed
141 to secure his right to the benefits concerning which the defendant
142 has introduced evidence. The plaintiff may also introduce
143 evidence of any leave time lost due to the personal injury. The
144 presiding judge shall reduce the jury award by the amount of such
145 benefits less any amount which the plaintiff has paid or
146 contributed to secure such benefits. There shall be no reduction
147 for collateral sources for which a subrogation or reimbursement
148 right exists. Such reduction shall be offset to the extent of any
149 amount which has been paid, contributed, or forfeited by, or on
150 behalf of, the claimant or members of the claimant's immediate
151 family to secure her or his right to any collateral source benefit
152 which the claimant is receiving as a result of her or his injury.

153 **SECTION 5.** No owner, lessee or person in control of any
154 property or premises shall be held liable for failing to prevent
155 or failing to deter any act or omission committed by another
156 person upon such property or premises that is a reckless, wanton,
157 intentionally wrongful, illegal or criminal act unless the owner,



158 lessee or person in control knew or should have known of prior
159 similar occurrences.

160 **SECTION 6.** Except as provided in Section 7 of House Bill No.
161 2, 2002 Third Extraordinary Session, in any civil action for
162 injury in which the trier of fact finds the defendant liable, the
163 plaintiff shall not be awarded more than One Million Dollars
164 (\$1,000,000.00) for hedonic damages. For purposes of this
165 section, hedonic damages means damages for the enjoyment of life
166 of the deceased or injured person, as measured separately from the
167 economic productive value that an injured or deceased person would
168 have had.

169 **SECTION 7.** This act shall take effect and be in force from
170 and after January 1, 2003, and shall apply to all causes of action
171 filed on or after that date.

