

By: Senator(s) Chaney

To: Select Senate Cmte on  
Civil Justice Syst

SENATE BILL NO. 2013

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.

