

By: Senator(s) Smith

To: Select Senate Cmte on
Civil Justice Syst

SENATE BILL NO. 2015

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 LIMIT THE LIABILITY OF THE SPONSOR OF
18 AN EVENT IN THE CASE OF A CIVIL ACTION ARISING OUT OF ACTIVITIES
19 OCCURRING ON THE PREMISES OF THE LOCATION WHERE THE EVENT IS HELD
20 OR CONDUCTED, PROVIDED THAT THE SPONSOR DOES NOT EXERCISE CONTROL
21 OVER ANY ASPECT OF THE EVENT OTHER THAN ACTING AS SPONSOR; TO
22 DEFINE THE TERMS "SPONSOR" AND "EVENT"; TO PROVIDE THAT THIS
23 LIMITATION OF LIABILITY SHALL NOT EXTEND TO WILLFUL ACTS OR GROSS
24 NEGLIGENCE ON THE PART OF A SPONSOR; TO AMEND SECTION 67-3-73,
25 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THERE IS NO LIABILITY TO
26 A WHOLESALE OF BEER AND LIGHT WINE FOR THE LAWFUL DISTRIBUTION TO
27 A RETAIL PERMITTEE; TO PROVIDE IMMUNITY FOR A PREMISES OWNER UNDER
28 CERTAIN CIRCUMSTANCES; TO PROVIDE THAT CIVIL ACTIONS SHALL NOT BE
29 ASSIGNED TO A JUDGE UNTIL AT LEAST ONE DEFENDANT HAS FILED A
30 RESPONSIVE PLEADING; TO PROHIBIT RECOVERY OF HEDONIC DAMAGES IN
31 CIVIL ACTIONS; TO PROVIDE THAT PAYMENTS FROM COLLATERAL SOURCES
32 SHALL BE REDUCED FROM AWARDS IN CIVIL ACTIONS; TO AMEND SECTION
33 75-67-103, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS UNDER
34 THE SMALL LOAN REGULATORY LAW TO INCLUDE DEFINITIONS FOR THE TERMS
35 "OTHER CHARGES," "CONSUMER LOAN" AND "CONSUMER"; TO AMEND SECTIONS
36 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
37 REMEDIES, PENALTIES AND DAMAGES FOR CONTRACTING FOR AND RECEIVING
38 UNLAWFUL OTHER CHARGES IN CONNECTION WITH CONSUMER LOANS; TO
39 PROVIDE FOR DOUBLE PENALTY AMOUNTS IF OTHER CHARGES ARE CONTRACTED
40 FOR OR RECEIVED BY ACTUAL FRAUD; TO PROVIDE FOR THE RECOVERY OF
41 ATTORNEY'S FEES IF PENALTIES ARE RECOVERED; TO PROVIDE THAT THE
42 REMEDIES, PENALTIES AND DAMAGES PROVIDED FOR UNDER THIS ACT ARE
43 EXCLUSIVE; TO PROVIDE FOR A ONE-YEAR STATUTE OF LIMITATIONS ON
44 FILING ACTIONS FOR RECOVERY OF PENALTIES OR DAMAGES UNDER THIS
45 ACT; TO PROVIDE THAT THE PROVISIONS OF THIS ACT SHALL STAND
46 REPEALED ON JULY 1, 2004; TO PROVIDE THAT THE AUTHORITY TO SUE ANY
47 FIREARMS OR AMMUNITION MANUFACTURER, DISTRIBUTOR OR DEALER ON
48 BEHALF OF LOCAL GOVERNMENTAL ENTITIES FOR CERTAIN CAUSES OF ACTION
49 SHALL BE EXCLUSIVELY RESERVED TO THE STATE; TO REPEAL SECTIONS
50 11-3-23 AND 11-3-25, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR
51 THE ASSESSMENT OF A PENALTY ON CERTAIN JUDGMENTS APPEALED TO THE
52 SUPREME COURT; AND FOR RELATED PURPOSES.



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

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

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

* * *

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

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

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

(2) A product seller shall not be considered to have failed to exercise reasonable care with respect to a product, based upon an alleged failure to inspect the product, if there was no reasonable opportunity to inspect the product; or the inspection,



in the exercise of reasonable care, would not have revealed that the product was defective.

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

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

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

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

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

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

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

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

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

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

(b) A product is not defective in design or formulation if the harm for which the claimant seeks to recover compensatory



damages was caused by an inherent characteristic of the product which is a generic aspect of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

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

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

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



151 deliberately and voluntarily chose to expose himself to the danger
152 in such a manner to register assent on the continuance of the
153 dangerous condition.

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

162 (f) In any action alleging that a product is defective
163 because of its design pursuant to paragraph (a)(i)3 of this
164 section, the manufacturer or product seller shall not be liable if
165 the claimant does not prove by the preponderance of the evidence
166 that at the time the product left the control of the manufacturer
167 or seller:

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

172 (ii) The product failed to function as expected
173 and there existed a feasible design alternative that would have to
174 a reasonable probability prevented the harm. A feasible design
175 alternative is a design that would have to a reasonable
176 probability prevented the harm without impairing the utility,
177 usefulness, practicality or desirability of the product to users
178 or consumers.

179 (g) (i) The manufacturer of a product who is found
180 liable for a defective product pursuant to paragraph (a) shall
181 indemnify a product seller for the costs of litigation, any
182 reasonable expenses, reasonable attorney's fees and any damages
183 awarded by the trier of fact unless the seller exercised



substantial control over that aspect of the design, testing, manufacture, packaging or labeling of the product that caused the harm for which recovery of damages is sought; the seller altered or modified the product, and the alteration or modification was a substantial factor in causing the harm for which recovery of damages is sought; the seller had actual knowledge of the defective condition of the product at the time he supplied same; or the seller made an express factual representation about the aspect of the product which caused the harm for which recovery of damages is sought.

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

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

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

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

* * *

(2) Except as may be otherwise provided in subsection (4) * * * of this section, in any civil action based on fault, the liability for damages caused by two (2) or more persons shall be several only, and not joint and several and a joint tort-feasor shall be liable only for the amount of damages allocated to him in



217 direct proportion to his percentage of fault. In assessing
218 percentages of fault, an employer and the employer's employee or a
219 principal and the principal's agent shall be considered as one (1)
220 defendant when the liability of such employer or principal has
221 been caused by the wrongful or negligent act or omission of the
222 employee or agent.

223 * * *

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

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

233 (5) In actions involving joint tort-feasors, the trier of
234 fact shall determine the percentage of fault for each joint
235 tort-feasor, including named parties and absent tort-feasors
236 without regard to whether the joint tort-feasor is immune from
237 damages. Fault allocated to an immune tort-feasor or a
238 tort-feasor whose liability is limited by law shall not be
239 reallocated to any other tort-feasor.

240 * * *

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

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

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



249 (a) "Noneconomic damages" means subjective,
250 nonpecuniary damages arising from death, pain, suffering,
251 inconvenience, mental anguish, worry, emotional distress, loss of
252 society and companionship, loss of consortium, bystander injury,
253 physical impairment, injury to reputation, humiliation,
254 embarrassment, * * * other nonpecuniary damages, and any other
255 theory of damages such as fear of loss, illness or injury. The
256 term "noneconomic damages" shall not include damages for
257 disfigurement, nor does it include punitive or exemplary damages.

258 (b) "Actual economic damages" means objectively
259 verifiable pecuniary damages arising from medical expenses and
260 medical care, rehabilitation services, custodial care,
261 disabilities, loss of earnings and earning capacity, loss of
262 income, burial costs, loss of use of property, costs of repair or
263 replacement of property, costs of obtaining substitute domestic
264 services, loss of employment, loss of business or employment
265 opportunities, and other objectively verifiable monetary losses.

266 * * *

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

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

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

277 (iii) For claims for causes of action filed on or
278 after July 1, 2017, the sum of One Million Dollars
279 (\$1,000,000.00).

280 (b) The jury shall not be advised of the limitations
281 imposed by this subsection (2) and the judge shall appropriately



reduce any award of noneconomic damages that exceeds the applicable limitation.

* * *

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

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

SECTION 7. (1) For purposes of this section, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

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

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

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

(b) No sponsor shall be liable to a person who may lawfully consume any intoxicating beverage for any injury suffered by such person, or by any other person, off the premises of the event, including wrongful death and property damage, because of



the intoxication of the person to whom the intoxicating beverages were served or furnished when on the premises of the event.

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

SECTION 8. Section 67-3-73, Mississippi Code of 1972, is amended as follows:

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

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

(3) Notwithstanding any other law to the contrary, no social host who serves or furnishes any intoxicating beverage to a person who may lawfully consume such intoxicating beverage shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off such social host's premises, including wrongful death and property damage, because of the intoxication of the person to whom the intoxicating beverages were served or furnished. No social host who owns,



leases or otherwise lawfully occupies a premises on which, in his absence and without his consent, intoxicating beverages are consumed by a person who may lawfully consume such intoxicating beverage shall be liable to such person or to any other person or to the estate, or survivors of either, for any injury suffered off the premises, including wrongful death and property damage, because of the intoxication of the person who consumed the intoxicating beverages.

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

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

SECTION 9. No owner, lessee or person in control of any property or premises shall be held liable for failing to prevent or failing to deter any act or omission committed by another person upon such property or premises that is a reckless, wanton, intentionally wrongful, illegal or criminal act.

SECTION 10. Civil actions in circuit, chancery and county court shall not be assigned to a judge until at least one (1) defendant has filed a responsive pleading. However, any necessary preliminary matters may be decided by a judge on a separate rotating basis before assignment of the action to a particular judge.

SECTION 11. There shall be no recovery for hedonic damages in any civil actions. For purposes of this section, hedonic damages means damages for the enjoyment of life of the deceased,



as measured separately from the economic productive value that an injured or deceased person would have had.

SECTION 12. On motion by a defendant or upon its own motion, the court shall hear evidence of any amount of such damages incurred prior to the judgment which the defendant or defendants claim was replaced, compensated or indemnified pursuant to the United States Social Security Act, any state or federal income-disability act, any health, sickness or income-disability insurance, any accident insurance that provides health benefits or income-disability coverage, any contract or agreement of any group, organization, partnership, or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services, any contract or agreement to continue to pay, in whole or in part, the plaintiff's wages or income, or any other collateral source of benefits whatsoever. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount the plaintiff himself paid or contributed to secure his right to the benefits concerning which the defendant has introduced evidence. The plaintiff may also introduce evidence of any leave time lost due to the personal injury. The presiding judge shall reduce the jury award by the amount of such benefits less any amount which the plaintiff has paid or contributed to secure such benefits. There shall be no reduction for collateral sources for which a subrogation or reimbursement right exists. Such reduction shall be offset to the extent of any amount which has been paid, contributed, or forfeited by, or on behalf of, the claimant or members of the claimant's immediate family to secure her or his right to any collateral source benefit which the claimant is receiving as a result of her or his injury.

SECTION 13. Section 75-67-103, Mississippi Code of 1972, is amended as follows:

75-67-103. (1) The following words and phrases, when used in this article, shall, for the purposes of this article, have the



meanings respectively ascribed to them in this section, except where the context clearly describes and indicates a different meaning:

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

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

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

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

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

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

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



(h) "Consumer loan" means any loan or extension of credit in the principal amount of Twenty Thousand Dollars (\$20,000.00) or less offered or extended primarily for personal, family or household purposes.

(i) "Consumer" means any natural person who is obligated on any consumer loan.

(2) Paragraphs (g) through (i) of subsection (1) of this section shall stand repealed on July 1, 2004; however, the provisions of paragraphs (g) through (i) of subsection (1) of this section shall remain in full force and effect with respect to any loan agreement that is entered into before July 1, 2004.

SECTION 14. Section 75-67-119, Mississippi Code of 1972, is amended as follows:

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



478 (2) If, in connection with a consumer loan, any licensee or
479 other person contracts for or receives, or participates in
480 contracting for or receiving, other charges in violation of any
481 applicable statutory or common law duty, or which are otherwise
482 unlawful, then all those unlawful other charges, all finance
483 charges and all principal shall be forfeited and may be recovered
484 by the consumer, by suit or other proceeding, whether the contract
485 is executed or executory. However, no person who contracts for or
486 receives other charges in violation of any applicable statutory or
487 common law duty, or otherwise unlawfully, shall be subject to
488 forfeiture of principal if the person shows by a preponderance of
489 the evidence that those other charges were contracted for or
490 received unintentionally and as a result of a bona fide error
491 notwithstanding the maintenance of procedures reasonably adapted
492 to avoid any such violation. Examples of bona fide errors
493 include, but are not limited to, clerical, calculation, computer
494 malfunction and programming, and printing errors, except that an
495 error of legal judgment with respect to applicable statutory or
496 common law duty is not a bona fide error.

497 (3) If the other charges subject to forfeiture under this
498 section are found to have been contracted for or received by
499 actual fraud, any penalty recovered under subsection (2) of this
500 section shall be doubled.

501 (4) If a consumer recovers any penalty provided for under
502 subsection (2) of this section, the consumer also may recover
503 damages, to the extent proven by competent evidence, subject to
504 the following limitations:

505 (a) If the amount of the unlawful other charges is One
506 Hundred Dollars (\$100.00) or less, the maximum amount of damages
507 that may be recovered by the consumer as to each individual loan
508 is Three Thousand Dollars (\$3,000.00).

509 (b) If the amount of the unlawful other charges is more
510 than One Hundred Dollars (\$100.00) but less than One Thousand



Dollars (\$1,000.00), the maximum amount of damages that may be recovered by the consumer as to each individual loan is Fifteen Thousand Dollars (\$15,000.00).

(c) If the amount of the unlawful other charges is not less than One Thousand Dollars (\$1,000.00) but less than Two Thousand Dollars (\$2,000.00), the maximum amount of damages that may be recovered by the consumer as to each individual loan is Thirty Thousand Dollars (\$30,000.00).

(d) If the amount of the unlawful other charges is not less than Two Thousand Dollars (\$2,000.00) but less than Five Thousand Dollars (\$5,000.00), the maximum amount of damages that may be recovered by the consumer as to each individual loan is Forty-five Thousand Dollars (\$45,000.00).

(e) If the amount of the unlawful other charges is not less than Five Thousand Dollars (\$5,000.00), the maximum amount of damages that may be recovered by the consumer as to each individual loan is Sixty Thousand Dollars (\$60,000.00).

(5) If any penalty is recovered under subsection (2) of this section, a reasonable attorney's fee also shall be recovered from the offending party by the consumer.

(6) Except as provided in subsection (7) of this section, the remedies, penalties and damages provided for in this section shall be the exclusive remedies, penalties and damages for contracting for or receiving any finance charge in excess of that expressly permitted by Section 75-17-21, or for contracting for or receiving, or participating in contracting for or receiving, other charges in violation of any applicable statutory or common law duty, or which are otherwise unlawful.

(7) The remedies, penalties and damages provided for in this section are supplemental to the defense provided in Section 75-67-127(3) and to the enforcement powers conferred upon the Commissioner of Banking and Consumer Finance.



543 (8) No action for recovery of any penalty or damages
544 provided for under this section may be brought unless it is filed
545 within one (1) year after the date of the act or event that
546 created the cause of action. However, if the act or event that
547 created the cause of action occurred before the effective date of
548 Senate Bill No. _____, 2002 Third Extraordinary Session, no action
549 for recovery of any penalty or damages provided for under this
550 section based on that cause of action may be brought unless it is
551 filed within one (1) year after the effective date of Senate Bill
552 No. _____, 2002 Third Extraordinary Session.

553 (9) Subsections (2) through (8) of this section shall stand
554 repealed on July 1, 2004; however, the provisions of subsections
555 (2) through (8) of this section shall remain in full force and
556 effect with respect to any loan agreement that is entered into
557 before July 1, 2004.

558 **SECTION 15.** Section 75-17-25, Mississippi Code of 1972, is
559 amended as follows:

560 75-17-25. (1) The term "finance charge" as used in this
561 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
562 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
563 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
564 payable, directly or indirectly, by a debtor for receiving a loan
565 or incident to or as a condition of the extension of credit,
566 including, but not limited to, interest, brokerage fees, finance
567 charges, loan fees, discount, points, service charges, transaction
568 charges, activity charges, carrying charges, time price
569 differential, finders fees or any other cost or expense to the
570 debtor for services rendered or to be rendered to the debtor in
571 making, arranging or negotiating a loan of money or an extension
572 of credit and for the accounting, guaranteeing, endorsing,
573 collecting and other actual services rendered by the lender;
574 provided, however, that recording fees, motor vehicle title fees,
575 attorney's fees, insurance premiums, fees permitted to be charged



576 under the provisions of Section 79-7-7, service charges as
577 provided in Section 81-19-31, and with respect to a debt secured
578 by an interest in land, bona fide closing costs and appraisal fees
579 incidental to the transaction shall not be included in the finance
580 charge.

581 (2) Subject to the other provisions of this section,
582 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
583 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
584 75-67-127 and 75-67-217, the finance charge may be calculated on
585 the assumption that the indebtedness will be discharged as it
586 becomes due, and prepayment penalties and statutory default
587 charges shall not be included in the finance charge. Nothing in
588 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,
589 75-17-27, 75-17-29 or 75-17-33 shall limit or restrict the manner
590 of contracting for such finance charge, whether by way of add-on,
591 discount or otherwise, so long as the annual percentage rate does
592 not exceed that permitted by law. If a greater finance charge
593 than that authorized by applicable law shall be stipulated for or
594 received in any case, all interest and finance charge shall be
595 forfeited, and may be recovered back, whether the contract be
596 executed or executory. If a finance charge be contracted for or
597 received that exceeds the maximum authorized by law by more than
598 one hundred percent (100%), the principal and all finance charges
599 shall be forfeited and any amount paid may be recovered by suit.
600 The provisions of this section, Section 75-17-1 and Sections
601 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
602 shall not restrict the extension of credit pursuant to any other
603 applicable law. A licensee under the Small Loan Regulatory Law
604 (Sections 75-67-101 through 75-67-135), and the Small Loan
605 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may
606 contract for and receive finance charges as authorized by Section
607 75-17-21, and the late payment charge as authorized by Section



608 75-17-27, regardless of the purpose for which the loan or other
609 extension of credit is made.

610 (3) If, in connection with a consumer loan, any person
611 contracts for or receives, or participates in contracting for or
612 receiving, other charges in violation of any applicable statutory
613 or common law duty, or which are otherwise unlawful, then all
614 those unlawful other charges, all finance charges and all
615 principal shall be forfeited and may be recovered by the consumer,
616 by suit or other proceeding, whether the contract is executed or
617 executory. However, no person who contracts for or receives other
618 charges in violation of any applicable statutory or common law
619 duty, or otherwise unlawfully, shall be subject to forfeiture of
620 principal if the person shows by a preponderance of the evidence
621 that those other charges were contracted for or received
622 unintentionally and as a result of a bona fide error
623 notwithstanding the maintenance of procedures reasonably adapted
624 to avoid any such violation. Examples of bona fide errors
625 include, but are not limited to, clerical, calculation, computer
626 malfunction and programming, and printing errors, except that an
627 error of legal judgment with respect to applicable statutory or
628 common law duty is not a bona fide error.

629 (4) If the other charges subject to forfeiture under this
630 section are found to have been contracted for or received by
631 actual fraud, any penalty recovered under subsection (3) of this
632 section shall be doubled.

633 (5) If a consumer recovers any penalty provided for under
634 subsection (3) of this section, the consumer also may recover
635 damages, to the extent proven by competent evidence, subject to
636 the following limitations:

637 (a) If the amount of the unlawful other charges is One
638 Hundred Dollars (\$100.00) or less, the maximum amount of damages
639 that may be recovered by the consumer as to each individual loan
640 is Three Thousand Dollars (\$3,000.00).



641 (b) If the amount of the unlawful other charges is more
642 than One Hundred Dollars (\$100.00) but less than One Thousand
643 Dollars (\$1,000.00), the maximum amount of damages that may be
644 recovered by the consumer as to each individual loan is Fifteen
645 Thousand Dollars (\$15,000.00).

646 (c) If the amount of the unlawful other charges is not
647 less than One Thousand Dollars (\$1,000.00) but less than Two
648 Thousand Dollars (\$2,000.00), the maximum amount of damages that
649 may be recovered by the consumer as to each individual loan is
650 Thirty Thousand Dollars (\$30,000.00).

651 (d) If the amount of the unlawful other charges is not
652 less than Two Thousand Dollars (\$2,000.00) but less than Five
653 Thousand Dollars (\$5,000.00), the maximum amount of damages that
654 may be recovered by the consumer as to each individual loan is
655 Forty-five Thousand Dollars (\$45,000.00).

656 (e) If the amount of the unlawful other charges is not
657 less than Five Thousand Dollars (\$5,000.00), the maximum amount of
658 damages that may be recovered by the consumer as to each
659 individual loan is Sixty Thousand Dollars (\$60,000.00).

660 (6) If any penalty is recovered under subsection (3) of this
661 section, a reasonable attorney's fee also shall be recovered from
662 the offending party by the consumer.

663 (7) The remedies, penalties and damages provided for in this
664 section shall be the exclusive remedies, penalties and damages for
665 contracting for or receiving any finance charge in excess of that
666 permitted by applicable law, or for contracting for or receiving,
667 or participating in contracting for or receiving, other charges in
668 violation of any applicable statutory or common law duty, or which
669 are otherwise unlawful.

670 (8) As used in this section:

671 (a) "Consumer loan" means any loan or extension of
672 credit offered or extended in the principal amount of Twenty



673 Thousand Dollars (\$20,000.00) or less primarily for personal,
674 family or household purposes.

675 (b) "Consumer" means any natural person obligated on
676 any consumer loan.

677 (c) "Other charges" means any amounts contracted for or
678 received by any person in connection with a consumer loan, other
679 than finance charges as defined in this section.

680 (9) No action for recovery of any penalty or damages
681 provided for under this section may be brought unless it is filed
682 within one (1) year after the date of the act or event that
683 created the cause of action. However, if the act or event that
684 created the cause of action occurred before the effective date of
685 Senate Bill No. _____, 2002 Third Extraordinary Session, no action
686 for recovery of any penalty or damages provided for under this
687 section based on that cause of action may be brought unless it is
688 filed within one (1) year after the effective date of Senate Bill
689 No. _____, 2002 Third Extraordinary Session.

690 (10) Subsections (3) through (9) of this section shall
691 stand repealed on July 1, 2004; however, the provisions of
692 subsections (3) through (9) of this section shall remain in full
693 force and effect with respect to any loan agreement that is
694 entered into before July 1, 2004.

695 **SECTION 16.** (1) The authority to bring an action against
696 any firearms or ammunition manufacturer, distributor or dealer
697 duly licensed under federal law on behalf of any governmental
698 entity created by or pursuant to an act of the Mississippi
699 Legislature or the Mississippi Constitution of 1890, or any
700 department, agency or authority thereof, for damages, abatement,
701 injunctive relief or any other relief or remedy resulting from or
702 relating to the lawful design, manufacture, distribution or sale
703 of firearms, firearm components, silencers, ammunition or
704 ammunition components to the public, shall be exclusively reserved
705 to the state. This section shall not prohibit a political



706 subdivision from bringing an action against a firearm or
707 ammunition manufacturer, distributor or dealer for breach of
708 contract or warranty as to firearms or ammunition purchased by the
709 political subdivision, or for injuries resulting from a firearm
710 malfunction due to defects in materials or workmanship.

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

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

716 **SECTION 18.** This act shall take effect and be in force from
717 and after January 1, 2003, and shall apply to all causes of action
718 filed on or after that date.

