

By: Senator(s) Little, Robertson To: Select Senate Cmte on Civil Justice Syst

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 2016

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 PROVIDE THAT THE AUTHORITY TO SUE ANY FIREARMS OR AMMUNITION
37 MANUFACTURER, DISTRIBUTOR OR DEALER ON BEHALF OF LOCAL
38 GOVERNMENTAL ENTITIES FOR CERTAIN CAUSES OF ACTION SHALL BE
39 EXCLUSIVELY RESERVED TO THE STATE; TO AMEND SECTION 75-67-103,
40 MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS UNDER THE SMALL
41 LOAN REGULATORY LAW TO INCLUDE DEFINITIONS FOR THE TERMS "OTHER
42 CHARGES," "CONSUMER LOAN," AND "CONSUMER"; TO AMEND SECTIONS
43 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
44 REMEDIES, PENALTIES AND DAMAGES FOR CONTRACTING FOR AND RECEIVING
45 UNLAWFUL OTHER CHARGES IN CONNECTION WITH CONSUMER LOANS; TO
46 PROVIDE FOR DOUBLE PENALTY AMOUNTS IF OTHER CHARGES ARE CONTRACTED
47 FOR OR RECEIVED BY ACTUAL FRAUD; TO PROVIDE FOR THE RECOVERY OF
48 ATTORNEY'S FEES IF PENALTIES ARE RECOVERED; TO PROVIDE THAT THE
49 REMEDIES, PENALTIES AND DAMAGES PROVIDED FOR UNDER THIS ACT ARE
50 EXCLUSIVE; TO PROVIDE FOR A ONE-YEAR STATUTE OF LIMITATIONS ON
51 FILING ACTIONS FOR RECOVERY OF PENALTIES OR DAMAGES UNDER THIS
52 ACT; TO PROVIDE THAT THE PROVISIONS OF THIS ACT SHALL STAND



53 REPEALED ON JULY 1, 2004; TO REPEAL SECTIONS 11-3-23 AND 11-3-25,
54 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE ASSESSMENT OF A
55 PENALTY ON CERTAIN JUDGMENTS APPEALED TO THE SUPREME COURT; AND
56 FOR RELATED PURPOSES.

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

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

61 11-11-3. * * * Civil actions of which the circuit court has
62 original jurisdiction shall be commenced * * * in the county where
63 the alleged act or omission occurred or where the event that
64 caused the injury occurred * * *. Civil actions alleging a
65 defective product may also be commenced in the county where the
66 plaintiff purchased the product. Venue shall be proper as to each
67 and every named plaintiff. If the venue is improper as to any
68 plaintiff, then the claims involving that plaintiff shall be
69 severed and transferred to a county where venue is proper as to
70 such claims, or dismissed without prejudice if there exists no
71 county of proper venue.

72 * * *

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

77 **SECTION 3.** The following shall be codified as Section
78 11-1-64, Mississippi Code of 1972:

79 11-1-64. (1) In any civil action alleging damages caused by
80 a product, a product seller other than a manufacturer shall not be
81 liable for a latent defect if the seller is a mere conduit who
82 purchased the product from a reputable manufacturer. It is the
83 intent of this section to insulate innocent sellers who are not
84 actively negligent from forum driven lawsuits.

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



88 reasonable opportunity to inspect the product; or the inspection,
89 in the exercise of reasonable care, would not have revealed that
90 the product was defective.

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

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

96 11-1-63. In any action for damages caused by a product
97 except for commercial damage to the product itself:

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

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

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

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

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

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

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



120 (b) A product is not defective in design or formulation
121 if the harm for which the claimant seeks to recover compensatory
122 damages was caused by an inherent characteristic of the product
123 which is a generic aspect of the product that cannot be eliminated
124 without substantially compromising the product's usefulness or
125 desirability and which is recognized by the ordinary person with
126 the ordinary knowledge common to the community.

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

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

150 (d) In any action alleging that a product is defective
151 pursuant to paragraph (a) of this section, the manufacturer or
152 seller shall not be liable if the claimant (i) had knowledge of a



153 condition of the product that was inconsistent with his safety;
154 (ii) appreciated the danger in the condition; and (iii)
155 deliberately and voluntarily chose to expose himself to the danger
156 in such a manner to register assent on the continuance of the
157 dangerous condition.

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

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

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

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

183 (g) (i) The manufacturer of a product who is found
184 liable for a defective product pursuant to paragraph (a) shall
185 indemnify a product seller for the costs of litigation, any



186 reasonable expenses, reasonable attorney's fees and any damages
187 awarded by the trier of fact unless the seller exercised
188 substantial control over that aspect of the design, testing,
189 manufacture, packaging or labeling of the product that caused the
190 harm for which recovery of damages is sought; the seller altered
191 or modified the product, and the alteration or modification was a
192 substantial factor in causing the harm for which recovery of
193 damages is sought; the seller had actual knowledge of the
194 defective condition of the product at the time he supplied same;
195 or the seller made an express factual representation about the
196 aspect of the product which caused the harm for which recovery of
197 damages is sought.

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

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

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

208 85-5-7. (1) As used in this section "fault" means an act or
209 omission of a person which is a proximate cause of injury or death
210 to another person or persons, damages to property, tangible or
211 intangible, or economic injury, including, but not limited to,
212 negligence, malpractice, strict liability, absolute liability or
213 failure to warn. "Fault" shall not include any tort which results
214 from an act or omission committed with a specific wrongful intent.

215 * * *

216 (2) Except as may be otherwise provided in subsection
217 (4) * * * of this section, in any civil action based on fault, the
218 liability for damages caused by two (2) or more persons shall be



219 several only, and not joint and several and a joint tort-feasor
220 shall be liable only for the amount of damages allocated to him in
221 direct proportion to his percentage of fault. In assessing
222 percentages of fault, an employer and the employer's employee or a
223 principal and the principal's agent shall be considered as one (1)
224 defendant when the liability of such employer or principal has
225 been caused by the wrongful or negligent act or omission of the
226 employee or agent.

227 * * *

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

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

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

244 * * *

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

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



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

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

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

270 * * *

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

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

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



281 (iii) For claims for causes of action filed on or
282 after July 1, 2017, the sum of One Million Dollars
283 (\$1,000,000.00).

284 (b) The jury shall not be advised of the limitations
285 imposed by this subsection (2) and the judge shall appropriately
286 reduce any award of noneconomic damages that exceeds the
287 applicable limitation.

288 * * *

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

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

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

298 11-1-65. (1) In any action in which punitive damages are
299 sought:

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

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

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



313 (d) The court shall determine whether the issue of
314 punitive damages may be submitted to the trier of fact; and, if
315 so, the trier of fact shall determine whether to award punitive
316 damages and in what amount.

317 (e) In all cases involving an award of punitive
318 damages, the fact finder, in determining the amount of punitive
319 damages, shall consider, to the extent relevant, the following:
320 the defendant's financial condition and net worth; the nature and
321 reprehensibility of the defendant's wrongdoing, for example, the
322 impact of the defendant's conduct on the plaintiff, or the
323 relationship of the defendant to the plaintiff; the defendant's
324 awareness of the amount of harm being caused and the defendant's
325 motivation in causing such harm; the duration of the defendant's
326 misconduct and whether the defendant attempted to conceal such
327 misconduct; and any other circumstances shown by the evidence that
328 bear on determining a proper amount of punitive damages. The
329 trier of fact shall be instructed that the primary purpose of
330 punitive damages is to punish the wrongdoer and deter similar
331 misconduct in the future by the defendant and others while the
332 purpose of compensatory damages is to make the plaintiff whole.

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

338 (ii) In determining whether the award is
339 excessive, the court shall take into consideration the following
340 factors:

341 1. Whether there is a reasonable relationship
342 between the punitive damage award and the harm likely to result
343 from the defendant's conduct as well as the harm that actually
344 occurred;



345 2. The degree of reprehensibility of the
346 defendant's conduct, the duration of that conduct, the defendant's
347 awareness, any concealment, and the existence and frequency of
348 similar past conduct;

349 3. The financial condition and net worth of
350 the defendant; and

351 4. In mitigation, the imposition of criminal
352 sanctions on the defendant for its conduct and the existence of
353 other civil awards against the defendant for the same conduct.

354 (g) Fifty percent (50%) of any award for punitive
355 damages in civil actions shall be payable to the state and fifty
356 percent (50%) to the individual plaintiff or plaintiffs who bring
357 the suit. The state's portion of the damage award shall be
358 deposited by the clerk of the court into the State General Fund
359 with a pro rata portion of attorney's fees and costs to be
360 deducted from the state's portion.

361 (2) The seller of a product other than the manufacturer
362 shall not be liable for punitive damages unless the seller
363 exercised substantial control over that aspect of the design,
364 testing, manufacture, packaging or labeling of the product that
365 caused the harm for which recovery of damages is sought; the
366 seller altered or modified the product, and the alteration or
367 modification was a substantial factor in causing the harm for
368 which recovery of damages is sought; the seller had actual
369 knowledge of the defective condition of the product at the time he
370 supplied same; or the seller made an express factual
371 representation about the aspect of the product which caused the
372 harm for which recovery of damages is sought.

373 (3) In all civil actions where an entitlement to punitive
374 damages shall have been established under applicable laws, no
375 award of punitive damages shall exceed the greater of three (3)
376 times the amount of the total compensatory damages awarded to the
377 plaintiff in an action or Five Million Dollars (\$5,000,000.00);



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

388 (4) Nothing herein shall be construed as creating a right to
389 an award of punitive damages or to limit the duty of the court, or
390 the appellate courts, to scrutinize all punitive damage awards,
391 ensure that all punitive damage awards comply with applicable
392 procedural, evidentiary and constitutional requirements, and to
393 order remittitur where appropriate.

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

- 396 (a) Contracts;
- 397 (b) Libel and slander; or
- 398 (c) Causes of action for persons and property arising
399 out of asbestos.

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

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

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



411 beverages are provided to persons who purchase tickets to attend
412 the event.

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

418 (b) No sponsor shall be liable to a person who may
419 lawfully consume any intoxicating beverage for any injury suffered
420 by such person, or by any other person, off the premises of the
421 event, including wrongful death and property damage, because of
422 the intoxication of the person to whom the intoxicating beverages
423 were served or furnished when on the premises of the event.

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

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

432 67-3-73. (1) The Mississippi Legislature finds and declares
433 that the consumption of intoxicating beverages, rather than the
434 sale or serving or furnishing of such beverages, is the proximate
435 cause of any injury, including death and property damage,
436 inflicted by an intoxicated person upon himself or upon another
437 person.

438 (2) Notwithstanding any other law to the contrary, no holder
439 of an alcoholic beverage, beer or light wine permit, or any agent
440 or employee of such holder, who lawfully sells or serves
441 intoxicating beverages to a person who may lawfully purchase such
442 intoxicating beverages, shall be liable to such person or to any
443 other person or to the estate, or survivors of either, for any



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

447 (3) Notwithstanding any other law to the contrary, no social
448 host who serves or furnishes any intoxicating beverage to a person
449 who may lawfully consume such intoxicating beverage shall be
450 liable to such person or to any other person or to the estate, or
451 survivors of either, for any injury suffered off such social
452 host's premises, including wrongful death and property damage,
453 because of the intoxication of the person to whom the intoxicating
454 beverages were served or furnished. No social host who owns,
455 leases or otherwise lawfully occupies a premises on which, in his
456 absence and without his consent, intoxicating beverages are
457 consumed by a person who may lawfully consume such intoxicating
458 beverage shall be liable to such person or to any other person or
459 to the estate, or survivors of either, for any injury suffered off
460 the premises, including wrongful death and property damage,
461 because of the intoxication of the person who consumed the
462 intoxicating beverages.

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

471 (5) There is no liability on a licensed wholesaler of beer
472 and light wine beverages for the lawful distribution of beer
473 and/or light wine to a retail permit holder. Further, there is no
474 liability on a manufacturer or importer of beer and/or light wine
475 beverages for the lawful distribution of beer and/or light wine to
476 a licensed wholesaler/distributor.



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

482 **SECTION 11.** Civil actions in circuit, chancery and county
483 court shall not be assigned to a judge until at least one (1)
484 defendant has filed a responsive pleading. However, any necessary
485 preliminary matters may be decided by a judge on a separate
486 rotating basis before assignment of the action to a particular
487 judge.

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

493 **SECTION 13.** On motion by a defendant or upon its own motion,
494 the court shall hear evidence of any amount of such damages
495 incurred prior to the judgment which the defendant or defendants
496 claim was replaced, compensated or indemnified pursuant to the
497 United States Social Security Act, any state or federal
498 income-disability act, any health, sickness or income-disability
499 insurance, any accident insurance that provides health benefits or
500 income-disability coverage, any contract or agreement of any
501 group, organization, partnership, or corporation to provide, pay
502 for or reimburse the cost of medical, hospital, dental or other
503 health care services, any contract or agreement to continue to
504 pay, in whole or in part, the plaintiff's wages or income, or any
505 other collateral source of benefits whatsoever. If the defendant
506 elects to introduce such evidence, the plaintiff may introduce
507 evidence of any amount the plaintiff himself paid or contributed
508 to secure his right to the benefits concerning which the defendant
509 has introduced evidence. The plaintiff may also introduce



510 evidence of any leave time lost due to the personal injury. The
511 presiding judge shall reduce the jury award by the amount of such
512 benefits less any amount which the plaintiff has paid or
513 contributed to secure such benefits. There shall be no reduction
514 for collateral sources for which a subrogation or reimbursement
515 right exists. Such reduction shall be offset to the extent of any
516 amount which has been paid, contributed, or forfeited by, or on
517 behalf of, the claimant or members of the claimant's immediate
518 family to secure her or his right to any collateral source benefit
519 which the claimant is receiving as a result of her or his injury.

520 **SECTION 14.** (1) The authority to bring an action against
521 any firearms or ammunition manufacturer, distributor or dealer
522 duly licensed under federal law on behalf of any governmental
523 entity created by or pursuant to an act of the Mississippi
524 Legislature or the Mississippi Constitution of 1890, or any
525 department, agency or authority thereof, for damages, abatement,
526 injunctive relief or any other relief or remedy resulting from or
527 relating to the lawful design, manufacture, distribution or sale
528 of firearms, firearm components, silencers, ammunition or
529 ammunition components to the public, shall be exclusively reserved
530 to the state. This section shall not prohibit a political
531 subdivision from bringing an action against a firearm or
532 ammunition manufacturer, distributor or dealer for breach of
533 contract or warranty as to firearms or ammunition purchased by the
534 political subdivision, or for injuries resulting from a firearm
535 malfunction due to defects in materials or workmanship.

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

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

540 75-67-103. (1) The following words and phrases, when used
541 in this article, shall, for the purposes of this article, have the
542 meanings respectively ascribed to them in this section, except



543 where the context clearly describes and indicates a different
544 meaning:

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

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

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

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

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

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

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



575 (h) "Consumer loan" means any loan or extension of
576 credit in the principal amount of Twenty Thousand Dollars
577 (\$20,000.00) or less offered or extended primarily for personal,
578 family or household purposes.

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

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

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

588 75-67-119. (1) If any finance charge in excess of that
589 expressly permitted by Section 75-17-21 is contracted for or
590 received, all finance charges and other charges shall be forfeited
591 and may be recovered, whether the contract be executed or
592 executory. If any finance charge is contracted for or received
593 that exceeds the maximum finance charge authorized by law by more
594 than one hundred percent (100%), the principal and all finance
595 charges and other charges shall be forfeited and any amount paid
596 may be recovered by suit; and, in addition, the licensee and the
597 several members, officers, directors, agents, and employees
598 thereof who shall have participated in such violation shall be
599 guilty of a misdemeanor and, upon conviction thereof, shall be
600 punished by a fine of not more than One Thousand Dollars
601 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in
602 the discretion of the court; and, further, the Commissioner of
603 Banking and Consumer Finance shall forthwith cite such licensee to
604 show cause why its license should not be revoked and proceedings
605 thereon shall be as is specifically provided in the Small Loan
606 Privilege Tax Law (Sections 75-67-201 through 75-67-243).



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

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

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

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

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



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

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

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

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

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

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

668 (7) The remedies, penalties and damages provided for in this
669 section are supplemental to the defense provided in Section
670 75-67-127(3) and to the enforcement powers conferred upon the
671 Commissioner of Banking and Consumer Finance.



672 (8) No action for recovery of any penalty or damages
673 provided for under this section may be brought unless it is filed
674 within one (1) year after the date of the act or event that
675 created the cause of action. However, if the act or event that
676 created the cause of action occurred before the effective date of
677 Senate Bill No. 2016, 2002 Third Extraordinary Session, no action
678 for recovery of any penalty or damages provided for under this
679 section based on that cause of action may be brought unless it is
680 filed within one (1) year after the effective date of Senate Bill
681 No. 2016, 2002 Third Extraordinary Session. Provided, however,
682 that nothing in this section is intended to revive any cause of
683 action that would otherwise be barred by any other applicable
684 statute of limitations.

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

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

692 75-17-25. (1) The term "finance charge" as used in this
693 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,
694 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,
695 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or
696 payable, directly or indirectly, by a debtor for receiving a loan
697 or incident to or as a condition of the extension of credit,
698 including, but not limited to, interest, brokerage fees, finance
699 charges, loan fees, discount, points, service charges, transaction
700 charges, activity charges, carrying charges, time price
701 differential, finders fees or any other cost or expense to the
702 debtor for services rendered or to be rendered to the debtor in
703 making, arranging or negotiating a loan of money or an extension
704 of credit and for the accounting, guaranteeing, endorsing,



705 collecting and other actual services rendered by the lender;
706 provided, however, that recording fees, motor vehicle title fees,
707 attorney's fees, insurance premiums, fees permitted to be charged
708 under the provisions of Section 79-7-7, service charges as
709 provided in Section 81-19-31, and with respect to a debt secured
710 by an interest in land, bona fide closing costs and appraisal fees
711 incidental to the transaction shall not be included in the finance
712 charge.

713 (2) Subject to the other provisions of this section,
714 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,
715 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,
716 75-67-127 and 75-67-217, the finance charge may be calculated on
717 the assumption that the indebtedness will be discharged as it
718 becomes due, and prepayment penalties and statutory default
719 charges shall not be included in the finance charge. Nothing in
720 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,
721 75-17-27, 75-17-29 or 75-17-33 shall limit or restrict the manner
722 of contracting for such finance charge, whether by way of add-on,
723 discount or otherwise, so long as the annual percentage rate does
724 not exceed that permitted by law. If a greater finance charge
725 than that authorized by applicable law shall be stipulated for or
726 received in any case, all interest and finance charge shall be
727 forfeited, and may be recovered back, whether the contract be
728 executed or executory. If a finance charge be contracted for or
729 received that exceeds the maximum authorized by law by more than
730 one hundred percent (100%), the principal and all finance charges
731 shall be forfeited and any amount paid may be recovered by suit.
732 The provisions of this section, Section 75-17-1 and Sections
733 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33
734 shall not restrict the extension of credit pursuant to any other
735 applicable law. A licensee under the Small Loan Regulatory Law
736 (Sections 75-67-101 through 75-67-135), and the Small Loan
737 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may



738 contract for and receive finance charges as authorized by Section
739 75-17-21, and the late payment charge as authorized by Section
740 75-17-27, regardless of the purpose for which the loan or other
741 extension of credit is made.

742 (3) If, in connection with a consumer loan, any person
743 contracts for or receives, or participates in contracting for or
744 receiving, other charges in violation of any applicable statutory
745 or common law duty, or which are otherwise unlawful, then all
746 those unlawful other charges, all finance charges and all
747 principal shall be forfeited and may be recovered by the consumer,
748 by suit or other proceeding, whether the contract is executed or
749 executory. However, no person who contracts for or receives other
750 charges in violation of any applicable statutory or common law
751 duty, or otherwise unlawfully, shall be subject to forfeiture of
752 principal if the person shows by a preponderance of the evidence
753 that those other charges were contracted for or received
754 unintentionally and as a result of a bona fide error
755 notwithstanding the maintenance of procedures reasonably adapted
756 to avoid any such violation. Examples of bona fide errors
757 include, but are not limited to, clerical, calculation, computer
758 malfunction and programming, and printing errors, except that an
759 error of legal judgment with respect to applicable statutory or
760 common law duty is not a bona fide error.

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

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

769 (a) If the amount of the unlawful other charges is One
770 Hundred Dollars (\$100.00) or less, the maximum amount of damages



771 that may be recovered by the consumer as to each individual loan
772 is Three Thousand Dollars (\$3,000.00).

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

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

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

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

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

795 (7) The remedies, penalties and damages provided for in this
796 section shall be the exclusive remedies, penalties and damages for
797 contracting for or receiving any finance charge in excess of that
798 permitted by applicable law, or for contracting for or receiving,
799 or participating in contracting for or receiving, other charges in
800 violation of any applicable statutory or common law duty, or which
801 are otherwise unlawful.

802 (8) As used in this section:



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

807 (b) "Consumer" means any natural person obligated on
808 any consumer loan.

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

812 (9) No action for recovery of any penalty or damages
813 provided for under this section may be brought unless it is filed
814 within one (1) year after the date of the act or event that
815 created the cause of action. However, if the act or event that
816 created the cause of action occurred before the effective date of
817 Senate Bill No. 2016, 2002 Third Extraordinary Session, no action
818 for recovery of any penalty or damages provided for under this
819 section based on that cause of action may be brought unless it is
820 filed within one (1) year after the effective date of Senate Bill
821 No. 2016, 2002 Third Extraordinary Session. Provided, however,
822 that nothing in this section is intended to revive any cause of
823 action that would otherwise be barred by any other applicable
824 statute of limitations.

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

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

833 **SECTION 19.** Except for Sections 15, 16 and 17 of this act,
834 this act shall take effect and be in force from and after January
835 1, 2003, and shall apply to all causes of action filed on or after



836 that date. Sections 15, 16 and 17 of this act shall be in force
837 from and after its passage.

