

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

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 THE AUTHORITY TO
35 SUE ANY FIREARMS OR AMMUNITION MANUFACTURER, DISTRIBUTOR OR DEALER
36 ON BEHALF OF LOCAL GOVERNMENTAL ENTITIES FOR CERTAIN CAUSES OF
37 ACTION SHALL BE EXCLUSIVELY RESERVED TO THE STATE; TO AMEND
38 SECTION 75-67-103, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS
39 UNDER THE SMALL LOAN REGULATORY LAW TO INCLUDE DEFINITIONS FOR THE
40 TERMS "OTHER CHARGES," "CONSUMER LOAN," AND "CONSUMER"; TO AMEND
41 SECTIONS 75-67-119 AND 75-17-25, MISSISSIPPI CODE OF 1972, TO
42 PROVIDE FOR REMEDIES, PENALTIES AND DAMAGES FOR CONTRACTING FOR
43 AND RECEIVING UNLAWFUL OTHER CHARGES IN CONNECTION WITH CONSUMER
44 LOANS; TO PROVIDE FOR DOUBLE PENALTY AMOUNTS IF OTHER CHARGES ARE
45 CONTRACTED FOR OR RECEIVED BY ACTUAL FRAUD; TO PROVIDE FOR THE
46 RECOVERY OF ATTORNEY'S FEES IF PENALTIES ARE RECOVERED; TO PROVIDE
47 THAT THE REMEDIES, PENALTIES AND DAMAGES PROVIDED FOR UNDER THIS
48 ACT ARE EXCLUSIVE; TO PROVIDE FOR A ONE-YEAR STATUTE OF
49 LIMITATIONS ON FILING ACTIONS FOR RECOVERY OF PENALTIES OR DAMAGES
50 UNDER THIS ACT; TO PROVIDE THAT THE PROVISIONS OF THIS ACT SHALL
51 STAND REPEALED ON JULY 1, 2004; TO REPEAL SECTIONS 11-3-23 AND
52 11-3-25, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE



53 ASSESSMENT OF A PENALTY ON CERTAIN JUDGMENTS APPEALED TO THE  
54 SUPREME COURT; AND FOR RELATED PURPOSES.

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

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

59 11-11-3. \* \* \* Civil actions of which the circuit court has  
60 original jurisdiction shall be commenced \* \* \* in the county where  
61 the alleged act or omission occurred or where the event that  
62 caused the injury occurred \* \* \*. Civil actions alleging a  
63 defective product may also be commenced in the county where the  
64 plaintiff purchased the product. Venue shall be proper as to each  
65 and every named plaintiff. If the venue is improper as to any  
66 plaintiff, then the claims involving that plaintiff shall be  
67 severed and transferred to a county where venue is proper as to  
68 such claims, or dismissed without prejudice if there exists no  
69 county of proper venue.

70 \* \* \*

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

75 **SECTION 3.** The following shall be codified as Section  
76 11-1-64, Mississippi Code of 1972:

77 11-1-64. (1) In any civil action alleging damages caused by  
78 a product, a product seller other than a manufacturer shall not be  
79 liable for a latent defect if the seller is a mere conduit who  
80 purchased the product from a reputable manufacturer. It is the  
81 intent of this section to insulate innocent sellers who are not  
82 actively negligent from forum driven lawsuits.

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



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

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

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

94 11-1-63. In any action for damages caused by a product  
95 except for commercial damage to the product itself:

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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

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

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



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

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

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

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

206 85-5-7. (1) As used in this section "fault" means an act or  
207 omission of a person which is a proximate cause of injury or death  
208 to another person or persons, damages to property, tangible or  
209 intangible, or economic injury, including, but not limited to,  
210 negligence, malpractice, strict liability, absolute liability or  
211 failure to warn. "Fault" shall not include any tort which results  
212 from an act or omission committed with a specific wrongful intent.

213 \* \* \*

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



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

225 \* \* \*

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

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

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

242 \* \* \*

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

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

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



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

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

268 \* \* \*

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

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

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

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

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





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

286 \* \* \*

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

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

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

296 11-1-65. (1) In any action in which punitive damages are  
297 sought:

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

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

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

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

315 (e) In all cases involving an award of punitive  
316 damages, the fact finder, in determining the amount of punitive



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

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

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

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

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

347 3. The financial condition and net worth of  
348 the defendant; and



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

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

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

371                   (3) In all civil actions where an entitlement to punitive  
372 damages shall have been established under applicable laws, no  
373 award of punitive damages shall exceed the greater of three (3)  
374 times the amount of the total compensatory damages awarded to the  
375 plaintiff in an action or Five Million Dollars (\$5,000,000.00);  
376 however, if the defendant is an individual or a business with less  
377 than fifty (50) full-time employees, an award of punitive damages  
378 shall not exceed two (2) times the amount of the plaintiff's  
379 compensatory damages or Two Million Dollars (\$2,000,000.00) or  
380 three percent (3%) of such defendant's net worth, whichever is  
381 less, unless the finder of fact and court find by clear and



382 convincing evidence that the defendant acted with criminal intent  
383 to cause serious physical bodily injury. This restriction shall  
384 not be disclosed to the trier of fact, but shall be applied by the  
385 court to any punitive damages verdict.

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

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

394 (a) Contracts;

395 (b) Libel and slander; or

396 (c) Causes of action for persons and property arising  
397 out of asbestos.

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

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

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

411 (2) (a) Any sponsor of an event, which does not exercise  
412 control over any aspect of the event other than acting as a  
413 sponsor, shall be immune from liability for any civil action



414 arising out of activities occurring on the premises of the  
415 location where the event is held or conducted.

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

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

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

430 67-3-73. (1) The Mississippi Legislature finds and declares  
431 that the consumption of intoxicating beverages, rather than the  
432 sale or serving or furnishing of such beverages, is the proximate  
433 cause of any injury, including death and property damage,  
434 inflicted by an intoxicated person upon himself or upon another  
435 person.

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

445 (3) Notwithstanding any other law to the contrary, no social  
446 host who serves or furnishes any intoxicating beverage to a person



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

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

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

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

477 **SECTION 11.** Civil actions in circuit, chancery and county  
478 court shall not be assigned to a judge until at least one (1)  
479 defendant has filed a responsive pleading. However, any necessary



480 preliminary matters may be decided by a judge on a separate  
481 rotating basis before assignment of the action to a particular  
482 judge.

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

488       **SECTION 13.** (1) The authority to bring an action against  
489 any firearms or ammunition manufacturer, distributor or dealer  
490 duly licensed under federal law on behalf of any governmental  
491 entity created by or pursuant to an act of the Mississippi  
492 Legislature or the Mississippi Constitution of 1890, or any  
493 department, agency or authority thereof, for damages, abatement,  
494 injunctive relief or any other relief or remedy resulting from or  
495 relating to the lawful design, manufacture, distribution or sale  
496 of firearms, firearm components, silencers, ammunition or  
497 ammunition components to the public, shall be exclusively reserved  
498 to the state. This section shall not prohibit a political  
499 subdivision from bringing an action against a firearm or  
500 ammunition manufacturer, distributor or dealer for breach of  
501 contract or warranty as to firearms or ammunition purchased by the  
502 political subdivision, or for injuries resulting from a firearm  
503 malfunction due to defects in materials or workmanship.

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

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

508       75-67-103. (1) The following words and phrases, when used  
509 in this article, shall, for the purposes of this article, have the  
510 meanings respectively ascribed to them in this section, except  
511 where the context clearly describes and indicates a different  
512 meaning:



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

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

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

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

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

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

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

543           (h) "Consumer loan" means any loan or extension of  
544 credit in the principal amount of Twenty Thousand Dollars





545 (\$20,000.00) or less offered or extended primarily for personal,  
546 family or household purposes.

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

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

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

556 75-67-119. (1) If any finance charge in excess of that  
557 expressly permitted by Section 75-17-21 is contracted for or  
558 received, all finance charges and other charges shall be forfeited  
559 and may be recovered, whether the contract be executed or  
560 executory. If any finance charge is contracted for or received  
561 that exceeds the maximum finance charge authorized by law by more  
562 than one hundred percent (100%), the principal and all finance  
563 charges and other charges shall be forfeited and any amount paid  
564 may be recovered by suit; and, in addition, the licensee and the  
565 several members, officers, directors, agents, and employees  
566 thereof who shall have participated in such violation shall be  
567 guilty of a misdemeanor and, upon conviction thereof, shall be  
568 punished by a fine of not more than One Thousand Dollars  
569 (\$1,000.00) and not less than One Hundred Dollars (\$100.00), in  
570 the discretion of the court; and, further, the Commissioner of  
571 Banking and Consumer Finance shall forthwith cite such licensee to  
572 show cause why its license should not be revoked and proceedings  
573 thereon shall be as is specifically provided in the Small Loan  
574 Privilege Tax Law (Sections 75-67-201 through 75-67-243).

575 (2) If, in connection with a consumer loan, any licensee or  
576 other person contracts for or receives, or participates in  
577 contracting for or receiving, other charges in violation of any



578 applicable statutory or common law duty, or which are otherwise  
579 unlawful, then all those unlawful other charges, all finance  
580 charges and all principal shall be forfeited and may be recovered  
581 by the consumer, by suit or other proceeding, whether the contract  
582 is executed or executory. However, no person who contracts for or  
583 receives other charges in violation of any applicable statutory or  
584 common law duty, or otherwise unlawfully, shall be subject to  
585 forfeiture of principal if the person shows by a preponderance of  
586 the evidence that those other charges were contracted for or  
587 received unintentionally and as a result of a bona fide error  
588 notwithstanding the maintenance of procedures reasonably adapted  
589 to avoid any such violation. Examples of bona fide errors  
590 include, but are not limited to, clerical, calculation, computer  
591 malfunction and programming, and printing errors, except that an  
592 error of legal judgment with respect to applicable statutory or  
593 common law duty is not a bona fide error.

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

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

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

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



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

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

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

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

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

636 (7) The remedies, penalties and damages provided for in this  
637 section are supplemental to the defense provided in Section  
638 75-67-127(3) and to the enforcement powers conferred upon the  
639 Commissioner of Banking and Consumer Finance.

640 (8) No action for recovery of any penalty or damages  
641 provided for under this section may be brought unless it is filed  
642 within one (1) year after the date of the act or event that  
643 created the cause of action. However, if the act or event that



644 created the cause of action occurred before the effective date of  
645 House Bill No. 14, Third Extraordinary Session 2002, no action for  
646 recovery of any penalty or damages provided for under this section  
647 based on that cause of action may be brought unless it is filed  
648 within one (1) year after the effective date of House Bill No. 14,  
649 Third Extraordinary Session 2002.

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

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

657 75-17-25. (1) The term "finance charge" as used in this  
658 section, Sections 75-17-1, 75-17-11, 75-17-13, 75-17-15, 75-17-17,  
659 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33,  
660 63-19-43, 75-67-127 and 75-67-217 means the amount or rate paid or  
661 payable, directly or indirectly, by a debtor for receiving a loan  
662 or incident to or as a condition of the extension of credit,  
663 including, but not limited to, interest, brokerage fees, finance  
664 charges, loan fees, discount, points, service charges, transaction  
665 charges, activity charges, carrying charges, time price  
666 differential, finders fees or any other cost or expense to the  
667 debtor for services rendered or to be rendered to the debtor in  
668 making, arranging or negotiating a loan of money or an extension  
669 of credit and for the accounting, guaranteeing, endorsing,  
670 collecting and other actual services rendered by the lender;  
671 provided, however, that recording fees, motor vehicle title fees,  
672 attorney's fees, insurance premiums, fees permitted to be charged  
673 under the provisions of Section 79-7-7, service charges as  
674 provided in Section 81-19-31, and with respect to a debt secured  
675 by an interest in land, bona fide closing costs and appraisal fees



676 incidental to the transaction shall not be included in the finance  
677 charge.

678       (2) Subject to the other provisions of this section,  
679 Sections 75-17-1, 75-17-13, 75-17-15, 75-17-17, 75-17-19,  
680 75-17-21, 75-17-23, 75-17-27, 75-17-29, 75-17-33, 63-19-43,  
681 75-67-127 and 75-67-217, the finance charge may be calculated on  
682 the assumption that the indebtedness will be discharged as it  
683 becomes due, and prepayment penalties and statutory default  
684 charges shall not be included in the finance charge. Nothing in  
685 Section 75-17-1 or Sections 75-17-19, 75-17-21, 75-17-23,  
686 75-17-27, 75-17-29 or 75-17-33 shall limit or restrict the manner  
687 of contracting for such finance charge, whether by way of add-on,  
688 discount or otherwise, so long as the annual percentage rate does  
689 not exceed that permitted by law. If a greater finance charge  
690 than that authorized by applicable law shall be stipulated for or  
691 received in any case, all interest and finance charge shall be  
692 forfeited, and may be recovered back, whether the contract be  
693 executed or executory. If a finance charge be contracted for or  
694 received that exceeds the maximum authorized by law by more than  
695 one hundred percent (100%), the principal and all finance charges  
696 shall be forfeited and any amount paid may be recovered by suit.  
697 The provisions of this section, Section 75-17-1 and Sections  
698 75-17-19, 75-17-21, 75-17-23, 75-17-27, 75-17-29 and 75-17-33  
699 shall not restrict the extension of credit pursuant to any other  
700 applicable law. A licensee under the Small Loan Regulatory Law  
701 (Sections 75-67-101 through 75-67-135), and the Small Loan  
702 Privilege Tax Law (Sections 75-67-201 through 75-67-243), may  
703 contract for and receive finance charges as authorized by Section  
704 75-17-21, and the late payment charge as authorized by Section  
705 75-17-27, regardless of the purpose for which the loan or other  
706 extension of credit is made.

707       (3) If, in connection with a consumer loan, any person  
708 contracts for or receives, or participates in contracting for or



709 receiving, other charges in violation of any applicable statutory  
710 or common law duty, or which are otherwise unlawful, then all  
711 those unlawful other charges, all finance charges and all  
712 principal shall be forfeited and may be recovered by the consumer,  
713 by suit or other proceeding, whether the contract is executed or  
714 executory. However, no person who contracts for or receives other  
715 charges in violation of any applicable statutory or common law  
716 duty, or otherwise unlawfully, shall be subject to forfeiture of  
717 principal if the person shows by a preponderance of the evidence  
718 that those other charges were contracted for or received  
719 unintentionally and as a result of a bona fide error  
720 notwithstanding the maintenance of procedures reasonably adapted  
721 to avoid any such violation. Examples of bona fide errors  
722 include, but are not limited to, clerical, calculation, computer  
723 malfunction and programming, and printing errors, except that an  
724 error of legal judgment with respect to applicable statutory or  
725 common law duty is not a bona fide error.

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

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

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

738 (b) If the amount of the unlawful other charges is more  
739 than One Hundred Dollars (\$100.00) but less than One Thousand  
740 Dollars (\$1,000.00), the maximum amount of damages that may be



741 recovered by the consumer as to each individual loan is Fifteen  
742 Thousand Dollars (\$15,000.00).

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

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

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

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

760 (7) The remedies, penalties and damages provided for in this  
761 section shall be the exclusive remedies, penalties and damages for  
762 contracting for or receiving any finance charge in excess of that  
763 permitted by applicable law, or for contracting for or receiving,  
764 or participating in contracting for or receiving, other charges in  
765 violation of any applicable statutory or common law duty, or which  
766 are otherwise unlawful.

767 (8) As used in this section:

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

772 (b) "Consumer" means any natural person obligated on  
773 any consumer loan.



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

777           (9) No action for recovery of any penalty or damages  
778 provided for under this section may be brought unless it is filed  
779 within one (1) year after the date of the act or event that  
780 created the cause of action. However, if the act or event that  
781 created the cause of action occurred before the effective date of  
782 House Bill No. 14, Third Extraordinary Session 2002, no action for  
783 recovery of any penalty or damages provided for under this section  
784 based on that cause of action may be brought unless it is filed  
785 within one (1) year after the effective date of House Bill No. 14,  
786 Third Extraordinary Session 2002.

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

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

795           **SECTION 18.** Except for Sections 14, 15 and 16 of this act,  
796 this act shall take effect and be in force from and after January  
797 1, 2003, and shall apply to all causes of action filed on or after  
798 that date. Sections 14, 15 and 16 of this act shall be in force  
799 from and after its passage.

