

By: Senator(s) Turner, Little, Robertson

To: Select Senate Cmte on Civil Justice Syst

SENATE BILL NO. 2017

1 AN ACT TO AMEND SECTION 85-5-7, MISSISSIPPI CODE OF 1972, AS
 2 AMENDED BY HOUSE BILL NO. 2, 2002 THIRD EXTRAORDINARY SESSION, TO
 3 REVISE THE LIMITATION OF JOINT AND SEVERAL LIABILITY FOR DAMAGES
 4 CAUSED BY TWO OR MORE PERSONS; TO AMEND SECTION 11-1-63,
 5 MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIRED TIME OF NOTICE TO
 6 A MANUFACTURER IN ORDER FOR A SELLER TO BE INDEMNIFIED; TO AMEND
 7 SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO IMPOSE A LIMITATION
 8 ON PUNITIVE DAMAGES; TO PROVIDE IMMUNITY FOR A PREMISES OWNER
 9 UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE THAT CIVIL ACTIONS SHALL
 10 NOT BE ASSIGNED TO A JUDGE UNTIL AT LEAST ONE DEFENDANT HAS FILED
 11 A RESPONSIVE PLEADING; TO PROVIDE THAT THE AUTHORITY TO SUE ANY
 12 FIREARMS OR AMMUNITION MANUFACTURER, DISTRIBUTOR OR DEALER ON
 13 BEHALF OF LOCAL GOVERNMENTAL ENTITIES FOR CERTAIN CAUSES OF ACTION
 14 SHALL BE EXCLUSIVELY RESERVED TO THE STATE; TO PROHIBIT RECOVERY
 15 OF HEDONIC DAMAGES IN CIVIL ACTIONS; TO AMEND SECTION 11-7-13,
 16 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO PROHIBIT
 17 ATTORNEY ADVERTISING BY ATTORNEYS NOT ADMITTED TO PRACTICE IN
 18 MISSISSIPPI; TO PROVIDE AN ASSESSMENT FOR FILING FRIVOLOUS CLAIMS;
 19 TO REPEAL SECTIONS 11-3-23 AND 11-3-25, MISSISSIPPI CODE OF 1972,
 20 WHICH PROVIDE FOR THE ASSESSMENT OF A PENALTY ON CERTAIN JUDGMENTS
 21 APPEALED TO THE SUPREME COURT; AND FOR RELATED PURPOSES.

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

23 **SECTION 1.** Section 85-5-7, Mississippi Code of 1972, as
 24 amended by House Bill No. 2, Third Extraordinary Session 2002, is
 25 amended as follows:

26 85-5-7. (1) As used in this section "fault" means an act or
 27 omission of a person which is a proximate cause of injury or death
 28 to another person or persons, damages to property, tangible or
 29 intangible, or economic injury, including, but not limited to,
 30 negligence, malpractice, strict liability, absolute liability or
 31 failure to warn. "Fault" shall not include any tort which results
 32 from an act or omission committed with a specific wrongful intent.

33 (2) Except as may be otherwise provided in subsections (6)
 34 and (8) of this section, in any civil action based on fault, the
 35 liability for damages caused by two (2) or more persons shall be
 36 joint and several only to the extent necessary for the person



37 suffering injury, death or loss to recover fifty percent (50%) of
38 his recoverable damages.

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

50 (4) Any defendant held jointly liable under this section
51 shall have a right of contribution against fellow joint
52 tort-feasors. A defendant shall be held responsible for
53 contribution to other joint tort-feasors only for the percentage
54 of fault assessed to such defendant.

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

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

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

67 (8) Except as provided in subsection (6) of this section, in
68 any action * * * involving joint tort-feasors, the trier of fact
69 shall determine the percentage of fault for each joint



70 tort-feasor, including named parties and absent tort-feasors,
71 without regard to whether the joint tort-feasor is immune from
72 damages. For noneconomic damages, a defendant's liability shall
73 be several only. For economic damages, for any defendant whose
74 fault is determined to be less than thirty percent (30%),
75 liability shall be several only and for any defendant whose fault
76 is determined to be thirty percent (30%) or more, liability shall
77 be joint and several only to the extent necessary for the person
78 suffering injury, death or loss to recover fifty percent (50%) of
79 his recoverable damages. Fault allocated under this subsection to
80 an immune tort-feasor or a tort-feasor whose liability is limited
81 by law shall not be reallocated to any other tort-feasor.

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

85 **SECTION 2.** Section 11-1-63, Mississippi Code of 1972, is
86 amended as follows:

87 11-1-63. In any action for damages caused by a product
88 except for commercial damage to the product itself:

89 (a) The manufacturer or seller of the product shall not
90 be liable if the claimant does not prove by the preponderance of
91 the evidence that at the time the product left the control of the
92 manufacturer or seller:

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

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

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

101 4. The product breached an express warranty
102 or failed to conform to other express factual representations upon



103 which the claimant justifiably relied in electing to use the
104 product; and

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

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

110 (b) A product is not defective in design or formulation
111 if the harm for which the claimant seeks to recover compensatory
112 damages was caused by an inherent characteristic of the product
113 which is a generic aspect of the product that cannot be eliminated
114 without substantially compromising the product's usefulness or
115 desirability and which is recognized by the ordinary person with
116 the ordinary knowledge common to the community.

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

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



136 professional person, taking into account the characteristics of,
137 and the ordinary knowledge common to, a physician or other
138 licensed professional who prescribes the drug, device or other
139 product.

140 (d) In any action alleging that a product is defective
141 pursuant to paragraph (a) of this section, the manufacturer or
142 seller shall not be liable if the claimant (i) had knowledge of a
143 condition of the product that was inconsistent with his safety;
144 (ii) appreciated the danger in the condition; and (iii)
145 deliberately and voluntarily chose to expose himself to the danger
146 in such a manner to register assent on the continuance of the
147 dangerous condition.

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

156 (f) In any action alleging that a product is defective
157 because of its design pursuant to paragraph (a)(i)3 of this
158 section, the manufacturer or product seller shall not be liable if
159 the claimant does not prove by the preponderance of the evidence
160 that at the time the product left the control of the manufacturer
161 or seller:

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

166 (ii) The product failed to function as expected
167 and there existed a feasible design alternative that would have to
168 a reasonable probability prevented the harm. A feasible design



169 alternative is a design that would have to a reasonable
170 probability prevented the harm without impairing the utility,
171 usefulness, practicality or desirability of the product to users
172 or consumers.

173 (g) (i) The manufacturer of a product who is found
174 liable for a defective product pursuant to paragraph (a) shall
175 indemnify a product seller for the costs of litigation, any
176 reasonable expenses, reasonable attorney's fees and any damages
177 awarded by the trier of fact unless the seller exercised
178 substantial control over that aspect of the design, testing,
179 manufacture, packaging or labeling of the product that caused the
180 harm for which recovery of damages is sought; the seller altered
181 or modified the product, and the alteration or modification was a
182 substantial factor in causing the harm for which recovery of
183 damages is sought; the seller had actual knowledge of the
184 defective condition of the product at the time he supplied same;
185 or the seller made an express factual representation about the
186 aspect of the product which caused the harm for which recovery of
187 damages is sought.

188 (ii) Subparagraph (i) shall not apply unless the
189 seller has given prompt notice of the suit to the manufacturer
190 within ninety (90) days of the service of the complaint against
191 the seller.

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

195 **SECTION 3.** Section 11-1-65, Mississippi Code of 1972, is
196 amended as follows:

197 11-1-65. (1) In any action in which punitive damages are
198 sought:

199 (a) Punitive damages may not be awarded if the claimant
200 does not prove by clear and convincing evidence that the defendant
201 against whom punitive damages are sought acted with actual malice,



202 gross negligence which evidences a willful, wanton or reckless
203 disregard for the safety of others, or committed actual fraud.

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

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

212 (d) The court shall determine whether the issue of
213 punitive damages may be submitted to the trier of fact; and, if
214 so, the trier of fact shall determine whether to award punitive
215 damages and in what amount.

216 (e) In all cases involving an award of punitive
217 damages, the fact finder, in determining the amount of punitive
218 damages, shall consider, to the extent relevant, the following:
219 the defendant's financial condition and net worth; the nature and
220 reprehensibility of the defendant's wrongdoing, for example, the
221 impact of the defendant's conduct on the plaintiff, or the
222 relationship of the defendant to the plaintiff; the defendant's
223 awareness of the amount of harm being caused and the defendant's
224 motivation in causing such harm; the duration of the defendant's
225 misconduct and whether the defendant attempted to conceal such
226 misconduct; and any other circumstances shown by the evidence that
227 bear on determining a proper amount of punitive damages. The
228 trier of fact shall be instructed that the primary purpose of
229 punitive damages is to punish the wrongdoer and deter similar
230 misconduct in the future by the defendant and others while the
231 purpose of compensatory damages is to make the plaintiff whole.

232 (f) (i) Before entering judgment for an award of
233 punitive damages the trial court shall ascertain that the award is
234 reasonable in its amount and rationally related to the purpose to



235 punish what occurred giving rise to the award and to deter its
236 repetition by the defendant and others.

237 (ii) In determining whether the award is
238 excessive, the court shall take into consideration the following
239 factors:

240 1. Whether there is a reasonable relationship
241 between the punitive damage award and the harm likely to result
242 from the defendant's conduct as well as the harm that actually
243 occurred;

244 2. The degree of reprehensibility of the
245 defendant's conduct, the duration of that conduct, the defendant's
246 awareness, any concealment, and the existence and frequency of
247 similar past conduct;

248 3. The financial condition and net worth of
249 the defendant; and

250 4. In mitigation, the imposition of criminal
251 sanctions on the defendant for its conduct and the existence of
252 other civil awards against the defendant for the same conduct.

253 (2) The seller of a product other than the manufacturer
254 shall not be liable for punitive damages unless the seller
255 exercised substantial control over that aspect of the design,
256 testing, manufacture, packaging or labeling of the product that
257 caused the harm for which recovery of damages is sought; the
258 seller altered or modified the product, and the alteration or
259 modification was a substantial factor in causing the harm for
260 which recovery of damages is sought; the seller had actual
261 knowledge of the defective condition of the product at the time he
262 supplied same; or the seller made an express factual
263 representation about the aspect of the product which caused the
264 harm for which recovery of damages is sought.

265 (3) (a) In all civil actions where an entitlement to
266 punitive damages shall have been established under applicable
267 laws, no award of punitive damages shall exceed the following



268 unless the finder of fact and court find by clear and convincing
269 evidence that the defendant acted with criminal intent to cause
270 serious physical bodily injury:

271 (i) Ten (10) times the total amount of
272 compensatory damages not to exceed One Million Dollars
273 (\$1,000,000.00), if the total amount of compensatory damages is
274 One Hundred Thousand Dollars (\$100,000.00) or less;

275 (ii) Eight (8) times the total amount of
276 compensatory damages not to exceed Two Million Dollars
277 (\$2,000,000.00), if the total amount of compensatory damages is
278 more than One Hundred Thousand Dollars (\$100,000.00) but not more
279 than Two Hundred Fifty Thousand Dollars (\$250,000.00); provided,
280 however, if the amount of punitive damages, as computed by
281 multiplying total compensatory damages times the multiple provided
282 in this subparagraph (ii), is less than the maximum dollar amount
283 allowed for punitive damages in subparagraph (i), then the maximum
284 amount of punitive damages allowed under this subparagraph (ii)
285 shall be the maximum dollar amount allowed in subparagraph (i);

286 (iii) Six (6) times the total amount of
287 compensatory damages not to exceed Three Million Dollars
288 (\$3,000,000.00), if the total amount of compensatory damages is
289 more than Two Hundred Fifty Thousand Dollars (\$250,000.00) but not
290 more than Five Hundred Thousand Dollars (\$500,000.00); provided,
291 however, if the amount of punitive damages, as computed by
292 multiplying total compensatory damages times the multiple provided
293 in this subparagraph (iii), is less than the maximum dollar amount
294 allowed for punitive damages in subparagraph (ii), then the
295 maximum amount of punitive damages allowed under this subparagraph
296 (iii) shall be the maximum dollar amount allowed in subparagraph
297 (ii);

298 (iv) Four (4) times the total amount of
299 compensatory damages not to exceed Four Million Dollars
300 (\$4,000,000.00), if the total amount of compensatory damages is



301 more than Five Hundred Thousand Dollars (\$500,000.00) but not more
302 than One Million Dollars (\$1,000,000.00); provided, however, if
303 the amount of punitive damages, as computed by multiplying total
304 compensatory damages times the multiple provided in this
305 subparagraph (iv), is less than the maximum dollar amount allowed
306 for punitive damages in subparagraph (iii), then the maximum
307 amount of punitive damages allowed under this subparagraph (iv)
308 shall be the maximum dollar amount allowed in subparagraph (iii);
309 or

310 (v) Three (3) times the total amount of
311 compensatory damages not to exceed Twenty Million Dollars
312 (\$20,000,000.00), if the total amount of compensatory damages is
313 more than One Million Dollars (\$1,000,000.00); provided, however,
314 if the amount of punitive damages, as computed by multiplying
315 total compensatory damages times the multiple provided in this
316 subparagraph (v), is less than the maximum dollar amount allowed
317 for punitive damages in subparagraph (iv), then the maximum amount
318 of punitive damages allowed under this subparagraph (v) shall be
319 the maximum dollar amount allowed in subparagraph (iv).

320 (b) The limitation in this subsection (3) shall not be
321 disclosed to the trier of fact, but shall be applied by the court
322 to any punitive damages verdict.

323 (4) Nothing herein shall be construed as creating a right to
324 an award of punitive damages or to limit the duty of the court, or
325 the appellate courts, to scrutinize all punitive damage awards,
326 ensure that all punitive damage awards comply with applicable
327 procedural, evidentiary and constitutional requirements, and to
328 order remittitur where appropriate.

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

- 331 (a) Contracts;
- 332 (b) Libel and slander; or



333 (c) Causes of action for persons and property arising
334 out of asbestos.

335 **SECTION 4.** No owner, lessee or person in control of any
336 property or premises shall be held liable for failing to prevent
337 or failing to deter any act or omission committed by another
338 person upon such property or premises that is a reckless, wanton,
339 intentionally wrongful, illegal or criminal act.

340 **SECTION 5.** Civil actions in circuit, chancery and county
341 court shall not be assigned to a judge until at least one (1)
342 defendant has filed a responsive pleading. However, any necessary
343 preliminary matters may be decided by a judge on a separate
344 rotating basis before assignment of the action to a particular
345 judge.

346 **SECTION 6.** (1) The authority to bring an action against any
347 firearms or ammunition manufacturer, distributor or dealer duly
348 licensed under federal law on behalf of any governmental entity
349 created by or pursuant to an act of the Mississippi Legislature or
350 the Mississippi Constitution of 1890, or any department, agency or
351 authority thereof, for damages, abatement, injunctive relief or
352 any other relief or remedy resulting from or relating to the
353 lawful design, manufacture, distribution or sale of firearms,
354 firearm components, silencers, ammunition or ammunition components
355 to the public, shall be exclusively reserved to the state. This
356 section shall not prohibit a political subdivision from bringing
357 an action against a firearm or ammunition manufacturer,
358 distributor or dealer for breach of contract or warranty as to
359 firearms or ammunition purchased by the political subdivision, or
360 for injuries resulting from a firearm malfunction due to defects
361 in materials or workmanship.

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

364 **SECTION 7.** (1) In any civil action for personal injury
365 there may be a recovery for pain and suffering and loss of



366 enjoyment of life. However, there shall be no recovery for loss
367 of enjoyment of life as a separate element of damages apart from
368 pain and suffering damages, and there shall be no instruction
369 given to the jury which separates loss of enjoyment of life from
370 pain and suffering. The determination of the existence and extent
371 of recovery for pain and suffering and loss of enjoyment of life
372 shall be a question for the finder of fact, subject to appellate
373 review, and shall not be made the subject of expert testimony.

374 (2) In any wrongful death action, there shall be no recovery
375 for loss of enjoyment of life caused by death.

376 **SECTION 8.** Section 11-7-13, Mississippi Code of 1972, is
377 amended as follows:

378 11-7-13. Whenever the death of any person shall be caused by
379 any real, wrongful or negligent act or omission, or by such unsafe
380 machinery, way or appliances as would, if death had not ensued,
381 have entitled the party injured or damaged thereby to maintain an
382 action and recover damages in respect thereof, or whenever the
383 death of any person shall be caused by the breach of any warranty,
384 express or implied, of the purity or fitness of any foods, drugs,
385 medicines, beverages, tobacco or any and all other articles or
386 commodities intended for human consumption, as would, had the
387 death not ensued, have entitled the person injured or made ill or
388 damaged thereby, to maintain an action and recover damages in
389 respect thereof, and such deceased person shall have left a widow
390 or children or both, or husband or father or mother, or sister, or
391 brother, the person or corporation, or both that would have been
392 liable if death had not ensued, and the representatives of such
393 person shall be liable for damages, notwithstanding the death, and
394 the fact that death was instantaneous shall in no case affect the
395 right of recovery. The action for such damages may be brought in
396 the name of the personal representative of the deceased person for
397 the benefit of all persons entitled under the law to recover, or
398 by widow for the death of her husband, or by the husband for the



399 death of the wife, or by the parent for the death of a child, or
400 in the name of a child, or in the name of a child for the death of
401 a parent, or by a brother for the death of a sister, or by a
402 sister for the death of a brother, or by a sister for the death of
403 a sister, or a brother for the death of a brother, or all parties
404 interested may join in the suit, and there shall be but one (1)
405 suit for the same death which shall ensue for the benefit of all
406 parties concerned, but the determination of such suit shall not
407 bar another action unless it be decided on its merits. Except as
408 otherwise provided in Section 7 of Senate Bill No. 2017, 2002
409 Third Extraordinary Session, in such action the party or parties
410 suing shall recover such damages allowable by law as the jury may
411 determine to be just, taking into consideration all the damages of
412 every kind to the decedent and all damages of every kind to any
413 and all parties interested in the suit.

414 This section shall apply to all personal injuries of servants
415 and employees received in the service or business of the master or
416 employer, where such injuries result in death, and to all deaths
417 caused by breach of warranty, either express or implied, of the
418 purity and fitness of foods, drugs, medicines, beverages, tobacco
419 or other articles or commodities intended for human consumption.

420 Any person entitled to bring a wrongful death action may
421 assert or maintain a claim for any breach of expressed warranty or
422 for any breach of implied warranty. A wrongful death action may
423 be maintained or asserted for strict liability in tort or for any
424 cause of action known to the law for which any person,
425 corporation, legal representative or entity would be liable for
426 damages if death had not ensued.

427 In an action brought pursuant to the provisions of this
428 section by the widow, husband, child, father, mother, sister or
429 brother of the deceased, or by all interested parties, such party
430 or parties may recover as damages property damages and funeral,
431 medical or other related expenses incurred by or for the deceased



432 as a result of such wrongful or negligent act or omission or
433 breach of warranty, whether an estate has been opened or not. Any
434 amount, but only such an amount, as may be recovered for property
435 damage, funeral, medical or other related expenses shall be
436 subject only to the payment of the debts or liabilities of the
437 deceased for property damages, funeral, medical or other related
438 expenses. All other damages recovered under the provisions of
439 this section shall not be subject to the payment of the debts or
440 liabilities of the deceased, except as hereinafter provided, and
441 such damages shall be distributed as follows:

442 Damages for the injury and death of a married man shall be
443 equally distributed to his wife and children, and if he has no
444 children all shall go to his wife; damages for the injury and
445 death of a married woman shall be equally distributed to the
446 husband and children, and if she has no children all shall go to
447 the husband; and if the deceased has no husband or wife, the
448 damages shall be equally distributed to the children; if the
449 deceased has no husband, nor wife, nor children, the damages shall
450 be distributed equally to the father, mother, brothers and
451 sisters, or such of them as the deceased may have living at his or
452 her death. If the deceased have neither husband, nor wife, nor
453 children, nor father, nor mother, nor sister, nor brother, then
454 the damages shall go to the legal representative, subject to debts
455 and general distribution, and the fact that the deceased was
456 instantly killed shall not affect the right of the legal
457 representative to recover. All references in this section to
458 children shall include descendants of a deceased child, such
459 descendants to take the share of the deceased child by
460 representation. There shall not be, in any case, a distinction
461 between the kindred of the whole and half blood of equal degree.
462 The provisions of this section shall apply to illegitimate
463 children on account of the death of the mother and to the mother
464 on account of the death of an illegitimate child or children, and



465 they shall have all the benefits, rights and remedies conferred by
466 this section on legitimates. The provisions of this section shall
467 apply to illegitimate children on account of the death of the
468 natural father and to the natural father on account of the death
469 of the illegitimate child or children, and they shall have all the
470 benefits, rights and remedies conferred by this section on
471 legitimates, if the survivor has or establishes the right to
472 inherit from the deceased under Section 91-1-15.

473 Any rights which a blood parent or parents may have under
474 this section are hereby conferred upon and vested in an adopting
475 parent or adopting parents surviving their deceased adopted child,
476 just as if the child were theirs by the full blood and had been
477 born to the adopting parents in lawful wedlock.

478 **SECTION 9.** The Legislature recognizes that attorneys should
479 be licensed by the State of Mississippi before engaging in any
480 solicitation of clients in this state. Such licensing of
481 attorneys protects the people of Mississippi in that The
482 Mississippi Bar has direct jurisdiction over attorneys licensed by
483 it. The Mississippi Supreme Court can act against such licensed
484 attorneys in the event that such licensed attorneys commit
485 violations of Mississippi law, court rules and rules of ethics for
486 attorneys. The Legislature finds that this section is necessary
487 for the protection of the people of Mississippi. An attorney who
488 is not admitted to The Mississippi Bar shall not advertise his
489 legal services in this state for the purpose of soliciting
490 prospective clients for the commencing of any civil action in this
491 state, or for the purpose of soliciting clients for any civil
492 action already commenced or pending in this state, unless the
493 attorney who is not a member of The Mississippi Bar has associated
494 an attorney who (a) is a member of The Mississippi Bar; and (b)
495 will be associated and actively working on substantial aspects in
496 any civil action filed on behalf of a client solicited as a result
497 of the advertisement. A law firm composed of both attorneys who



498 are members of The Mississippi Bar and attorneys who are not
499 members of The Mississippi Bar may advertise in this state if a
500 majority of the members of the firm are members of The Mississippi
501 Bar. For purposes of this section, a listing in the residential
502 or business section of the white pages of a telephone book shall
503 not be an advertisement.

504 **SECTION 10.** If a party files any pleading in a civil action,
505 which in the opinion of the court is frivolous, the court may
506 impose an assessment of not more than One Thousand Dollars
507 (\$1,000.00) against each party and attorney of record for the
508 party filing the pleading. Such assessment shall be in addition
509 to any other assessments, penalties or sanctions authorized by law
510 or otherwise. The proceeds of any assessment imposed under this
511 section shall be paid to the Mississippi Volunteer Lawyers
512 Project, Inc.

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

516 **SECTION 12.** If any provision of this act is held by a court
517 to be invalid, such invalidity shall not affect the remaining
518 provisions of this act, and to this end the provisions of this act
519 are declared severable.

520 **SECTION 13.** This act shall take effect and be in force from
521 and after January 1, 2003, and shall apply to all causes of action
522 filed on or after that date.

