

## REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MADAM PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 19: Civil justice reform; enact.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

36           11-11-3. (1) Civil actions of which the circuit court has  
37 original jurisdiction shall be commenced in the county where the  
38 defendant resides or in the county where the alleged act or  
39 omission occurred or where the event that caused the injury  
40 occurred. Civil actions against a nonresident may also be  
41 commenced in the county where the plaintiff resides or is  
42 domiciled. Civil actions alleging a defective product may also be  
43 commenced in the county where the plaintiff obtained the product.

44           \* \* \*

45           (2) If a civil action is brought in an improper county, such  
46 action may be transferred to the proper county pursuant to Section  
47 11-11-17.

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51 companies, are hereby repealed.

52           **SECTION 3.** Section 85-5-7, Mississippi Code of 1972, as  
53 amended by House Bill No. 2, Third Extraordinary Session 2002, is  
54 amended as follows:

55           85-5-7. (1) As used in this section "fault" means an act or  
56 omission of a person which is a proximate cause of injury or death  
57 to another person or persons, damages to property, tangible or  
58 intangible, or economic injury, including, but not limited to,  
59 negligence, malpractice, strict liability, absolute liability or  
60 failure to warn. "Fault" shall not include any tort which results  
61 from an act or omission committed with a specific wrongful intent.

62           (2) Except as may be otherwise provided in subsections (6)  
63 and (8) of this section, in any civil action based on fault, the  
64 liability for damages caused by two (2) or more persons shall be  
65 joint and several only to the extent necessary for the person  
66 suffering injury, death or loss to recover fifty percent (50%) of  
67 his recoverable damages.

68           (3) Except as otherwise provided in subsections (2), (6) and  
69 (8) of this section, in any civil action based on fault, the  
70 liability for damages caused by two (2) or more persons shall be  
71 several only, and not joint and several and a joint tort-feasor  
72 shall be liable only for the amount of damages allocated to him in  
73 direct proportion to his percentage of fault. In assessing  
74 percentages of fault an employer and the employer's employee or a  
75 principal and the principal's agent shall be considered as one (1)  
76 defendant when the liability of such employer or principal has  
77 been caused by the wrongful or negligent act or omission of the  
78 employee or agent.

79           (4) Any defendant held jointly liable under this section  
80 shall have a right of contribution against fellow joint  
81 tort-feasors. A defendant shall be held responsible for  
82 contribution to other joint tort-feasors only for the percentage  
83 of fault assessed to such defendant.

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

87           (6) Joint and several liability shall be imposed on all who  
88 consciously and deliberately pursue a common plan or design to  
89 commit a tortious act, or actively take part in it. Any person  
90 held jointly and severally liable under this section shall have a

91 right of contribution from his fellow defendants acting in  
92 concert.

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

96 (8) Except as provided in subsection (6) of this section, in  
97 any action involving joint tort-feasors, the trier of fact shall  
98 determine the percentage of fault for each joint tort-feasor,  
99 including named parties and absent tort-feasors, without regard to  
100 whether the joint tort-feasor is immune from damages. For  
101 noneconomic damages, a defendant's liability shall be several  
102 only. For economic damages, for any defendant whose fault is  
103 determined to be less than thirty percent (30%), liability shall  
104 be several only and for any defendant whose fault is determined to  
105 be thirty percent (30%) or more, liability shall be joint and  
106 several only to the extent necessary for the person suffering  
107 injury, death or loss to recover fifty percent (50%) of his  
108 recoverable damages. Fault allocated under this subsection to an  
109 immune tort-feasor or a tort-feasor whose liability is limited by  
110 law shall not be reallocated to any other tort-feasor.

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

114 **SECTION 4.** The following shall be codified as Section  
115 11-1-64, Mississippi Code of 1972:

116 11-1-64. (1) A defendant whose liability is based solely on  
117 his status as a seller in the stream of commerce may be dismissed  
118 from a products liability claim as provided in this section.

119 (2) This section shall apply to any products liability claim  
120 in which another defendant, including the manufacturer, is  
121 properly before the court and from whom recovery may be had for  
122 plaintiff's claim.

123 (3) A defendant may move for dismissal under this section  
124 within one hundred eighty (180) days from the date an answer or  
125 other responsive pleading is due to be filed or at such later time  
126 as may be permitted by the court for good cause shown. The motion

127 shall be accompanied by an affidavit which shall be made under  
128 oath and shall state that the defendant is aware of no facts or  
129 circumstances upon which a verdict might be reached against him,  
130 other than his status as a seller in the stream of commerce.

131 (4) The parties shall have sixty (60) days in which to  
132 conduct discovery on the issues raised in the motion and  
133 affidavit. The court for good cause shown, may extend the time  
134 for discovery, and may enter a protective order pursuant to the  
135 rules of civil procedure regarding the scope of discovery on other  
136 issues.

137 (5) Any party may move for a hearing on a motion to dismiss  
138 under this section. If the requirements of subsections (2) and  
139 (3) of this section are met, and no party comes forward at such a  
140 hearing with evidence of facts which would render the defendant  
141 seeking dismissal under this section liable on some basis other  
142 than his status as a seller in the stream of commerce, the court  
143 shall dismiss without prejudice the claim as to that defendant.

144 (6) No order of dismissal under this section shall operate  
145 to divest a court of venue or jurisdiction otherwise proper at the  
146 time the action was commenced. A defendant dismissed pursuant to  
147 this section shall be considered to remain a party to such action  
148 only for such purposes.

149 (7) An order of dismissal under this section shall be  
150 interlocutory until final disposition of plaintiff's claim.

151 **SECTION 5.** Section 11-1-63, Mississippi Code of 1972, is  
152 amended as follows:

153 11-1-63. Subject to the provisions of Section 11-1-64, in  
154 any action for damages caused by a product except for commercial  
155 damage to the product itself:

156 (a) The manufacturer or seller of the product shall not  
157 be liable if the claimant does not prove by the preponderance of  
158 the evidence that at the time the product left the control of the  
159 manufacturer or seller:

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

163 manufacturing specifications, or

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

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

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

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

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

177                   (b) A product is not defective in design or formulation  
178 if the harm for which the claimant seeks to recover compensatory  
179 damages was caused by an inherent characteristic of the product  
180 which is a generic aspect of the product that cannot be eliminated  
181 without substantially compromising the product's usefulness or  
182 desirability and which is recognized by the ordinary person with  
183 the ordinary knowledge common to the community.

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

194                   (ii) An adequate product warning or instruction is  
195 one that a reasonably prudent person in the same or similar  
196 circumstances would have provided with respect to the danger and  
197 that communicates sufficient information on the dangers and safe  
198 use of the product, taking into account the characteristics of,

199 and the ordinary knowledge common to an ordinary consumer who  
200 purchases the product; or in the case of a prescription drug,  
201 medical device or other product that is intended to be used only  
202 under the supervision of a physician or other licensed  
203 professional person, taking into account the characteristics of,  
204 and the ordinary knowledge common to, a physician or other  
205 licensed professional who prescribes the drug, device or other  
206 product.

207 (d) In any action alleging that a product is defective  
208 pursuant to paragraph (a) of this section, the manufacturer or  
209 seller shall not be liable if the claimant (i) had knowledge of a  
210 condition of the product that was inconsistent with his safety;  
211 (ii) appreciated the danger in the condition; and (iii)  
212 deliberately and voluntarily chose to expose himself to the danger  
213 in such a manner to register assent on the continuance of the  
214 dangerous condition.

215 (e) In any action alleging that a product is defective  
216 pursuant to paragraph (a)(i)2 of this section, the manufacturer or  
217 seller shall not be liable if the danger posed by the product is  
218 known or is open and obvious to the user or consumer of the  
219 product, or should have been known or open and obvious to the user  
220 or consumer of the product, taking into account the  
221 characteristics of, and the ordinary knowledge common to, the  
222 persons who ordinarily use or consume the product.

223 (f) In any action alleging that a product is defective  
224 because of its design pursuant to paragraph (a)(i)3 of this  
225 section, the manufacturer or product seller shall not be liable if  
226 the claimant does not prove by the preponderance of the evidence  
227 that at the time the product left the control of the manufacturer  
228 or seller:

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

233 (ii) The product failed to function as expected  
234 and there existed a feasible design alternative that would have to

235 a reasonable probability prevented the harm. A feasible design  
236 alternative is a design that would have to a reasonable  
237 probability prevented the harm without impairing the utility,  
238 usefulness, practicality or desirability of the product to users  
239 or consumers.

240 (g) (i) The manufacturer of a product who is found  
241 liable for a defective product pursuant to paragraph (a) shall  
242 indemnify a product seller for the costs of litigation, any  
243 reasonable expenses, reasonable attorney's fees and any damages  
244 awarded by the trier of fact unless the seller exercised  
245 substantial control over that aspect of the design, testing,  
246 manufacture, packaging or labeling of the product that caused the  
247 harm for which recovery of damages is sought; the seller altered  
248 or modified the product, and the alteration or modification was a  
249 substantial factor in causing the harm for which recovery of  
250 damages is sought; the seller had actual knowledge of the  
251 defective condition of the product at the time he supplied same;  
252 or the seller made an express factual representation about the  
253 aspect of the product which caused the harm for which recovery of  
254 damages is sought.

255 (ii) Subparagraph (i) shall not apply unless the  
256 seller has given prompt notice of the suit to the manufacturer  
257 within ninety (90) days of the service of the complaint against  
258 the seller.

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

262 **SECTION 6.** Section 11-1-65, Mississippi Code of 1972, is  
263 amended as follows:

264 11-1-65. (1) In any action in which punitive damages are  
265 sought:

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

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

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

279 (d) The court shall determine whether the issue of  
280 punitive damages may be submitted to the trier of fact; and, if  
281 so, the trier of fact shall determine whether to award punitive  
282 damages and in what amount.

283 (e) In all cases involving an award of punitive  
284 damages, the fact finder, in determining the amount of punitive  
285 damages, shall consider, to the extent relevant, the following:  
286 the defendant's financial condition and net worth; the nature and  
287 reprehensibility of the defendant's wrongdoing, for example, the  
288 impact of the defendant's conduct on the plaintiff, or the  
289 relationship of the defendant to the plaintiff; the defendant's  
290 awareness of the amount of harm being caused and the defendant's  
291 motivation in causing such harm; the duration of the defendant's  
292 misconduct and whether the defendant attempted to conceal such  
293 misconduct; and any other circumstances shown by the evidence that  
294 bear on determining a proper amount of punitive damages. The  
295 trier of fact shall be instructed that the primary purpose of  
296 punitive damages is to punish the wrongdoer and deter similar  
297 misconduct in the future by the defendant and others while the  
298 purpose of compensatory damages is to make the plaintiff whole.

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

304 (ii) In determining whether the award is  
305 excessive, the court shall take into consideration the following  
306 factors:



307                   1. Whether there is a reasonable relationship  
308 between the punitive damage award and the harm likely to result  
309 from the defendant's conduct as well as the harm that actually  
310 occurred;

311                   2. The degree of reprehensibility of the  
312 defendant's conduct, the duration of that conduct, the defendant's  
313 awareness, any concealment, and the existence and frequency of  
314 similar past conduct;

315                   3. The financial condition and net worth of  
316 the defendant; and

317                   4. In mitigation, the imposition of criminal  
318 sanctions on the defendant for its conduct and the existence of  
319 other civil awards against the defendant for the same conduct.

320        (2) The seller of a product other than the manufacturer  
321 shall not be liable for punitive damages unless the seller  
322 exercised substantial control over that aspect of the design,  
323 testing, manufacture, packaging or labeling of the product that  
324 caused the harm for which recovery of damages is sought; the  
325 seller altered or modified the product, and the alteration or  
326 modification was a substantial factor in causing the harm for  
327 which recovery of damages is sought; the seller had actual  
328 knowledge of the defective condition of the product at the time he  
329 supplied same; or the seller made an express factual  
330 representation about the aspect of the product which caused the  
331 harm for which recovery of damages is sought.

332        (3) (a) In any civil action where an entitlement to  
333 punitive damages shall have been established under applicable  
334 laws, no award of punitive damages shall exceed the following:

335                   (i) Twenty Million Dollars (\$20,000,000.00) for a  
336 defendant with a net worth of more than One Billion Dollars  
337 (\$1,000,000,000.00);

338                   (ii) Fifteen Million Dollars (\$15,000,000.00) for  
339 a defendant with a net worth of more than Seven Hundred Fifty  
340 Million Dollars (\$750,000,000.00) but not more than One Billion  
341 Dollars (\$1,000,000,000.00);

342                   (iii) Ten Million Dollars (\$10,000,000.00) for a

343 defendant with a net worth of more than Five Hundred Million  
344 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty  
345 Million Dollars (\$750,000,000.00);

346 (iv) Seven Million Five Hundred Thousand Dollars  
347 (\$7,500,000.00) for a defendant with a net worth of more than One  
348 Hundred Million Dollars (\$100,000,000.00) but not more than Five  
349 Hundred Million Dollars (\$500,000,000.00);

350 (v) Five Million Dollars (\$5,000,000.00) for a  
351 defendant with a net worth of more than Fifty Million Dollars  
352 (\$50,000,000.00) but not more than One Hundred Million Dollars  
353 (\$100,000,000.00); or

354 (vi) Four percent (4%) of the defendant's net  
355 worth for a defendant with a net worth of Fifty Million Dollars  
356 (\$50,000,000.00) or less.

357 (b) For the purposes of determining the defendant's net  
358 worth in paragraph (a), the amount of the net worth shall be  
359 determined in accordance with Generally Accepted Accounting  
360 Principles.

361 (c) The limitation on the amount of punitive damages  
362 imposed by this subsection (3) shall not be disclosed to the trier  
363 of fact, but shall be applied by the court to any punitive damages  
364 verdict.

365 (d) The limitation on the amount of punitive damages  
366 imposed by this subsection (3) shall not apply to actions brought  
367 for damages or an injury resulting from an act or failure to act  
368 by the defendant:

369 (i) If the defendant was convicted of a felony  
370 under the laws of this state or under federal law which caused the  
371 damages or injury; or

372 (ii) While the defendant was under the influence  
373 of alcohol or under the influence of drugs other than lawfully  
374 prescribed drugs administered in accordance with a prescription.

375 (e) The exceptions provided in paragraph (d) shall not  
376 apply to an employer of a person acting outside the scope of such  
377 person's employment or responsibility as an agent or employee.

378 (4) Nothing in this section shall be construed as creating a

379 right to an award of punitive damages or to limit the duty of the  
380 court, or the appellate courts, to scrutinize all punitive damage  
381 awards, ensure that all punitive damage awards comply with  
382 applicable procedural, evidentiary and constitutional  
383 requirements, and to order remittitur where appropriate.

384 (5) Subsections (1) and (2) of this section \* \* \* shall not  
385 apply to:

386 (a) Contracts;

387 (b) Libel and slander; or

388 (c) Causes of action for persons and property arising  
389 out of asbestos.

390 **SECTION 7.** No owner, occupant, lessee or managing agent of  
391 property shall be civilly liable for the criminal acts of a third  
392 party, unless such owner, occupant, lessee or managing agent knew  
393 or, with the exercise of reasonable care, should have known of the  
394 risk of criminal conduct on such property and the failure to  
395 exercise reasonable care to deter such foreseeable conduct is a  
396 proximate cause of damages to an individual or entity.

397 **SECTION 8.** Civil actions in circuit, chancery and county  
398 court shall not be assigned to a judge until at least one (1)  
399 defendant has filed a responsive pleading. However, any necessary  
400 preliminary matters may be decided by a judge on a separate  
401 rotating basis before assignment of the action to a particular  
402 judge.

403 **SECTION 9.** (1) The authority to bring an action against any  
404 firearms or ammunition manufacturer, distributor or dealer duly  
405 licensed under federal law on behalf of any governmental entity  
406 created by or pursuant to an act of the Mississippi Legislature or  
407 the Mississippi Constitution of 1890, or any department, agency or  
408 authority thereof, for damages, abatement, injunctive relief or  
409 any other relief or remedy resulting from or relating to the  
410 lawful design, manufacture, distribution or sale of firearms,  
411 firearm components, silencers, ammunition or ammunition components  
412 to the public, shall be exclusively reserved to the state. This  
413 section shall not prohibit a political subdivision from bringing  
414 an action against a firearm or ammunition manufacturer,

415 distributor or dealer for breach of contract or warranty as to  
416 firearms or ammunition purchased by the political subdivision, or  
417 for injuries resulting from a firearm malfunction due to defects  
418 in materials or workmanship.

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

421 **SECTION 10.** (1) In any civil action for personal injury  
422 there may be a recovery for pain and suffering and loss of  
423 enjoyment of life. However, there shall be no recovery for loss  
424 of enjoyment of life as a separate element of damages apart from  
425 pain and suffering damages, and there shall be no instruction  
426 given to the jury which separates loss of enjoyment of life from  
427 pain and suffering. The determination of the existence and extent  
428 of recovery for pain and suffering and loss of enjoyment of life  
429 shall be a question for the finder of fact, subject to appellate  
430 review, and the monetary value of the pain and suffering and loss  
431 of enjoyment of life shall not be made the subject of expert  
432 testimony.

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

435 **SECTION 11.** Section 11-7-13, Mississippi Code of 1972, is  
436 amended as follows:

437 11-7-13. Whenever the death of any person shall be caused by  
438 any real, wrongful or negligent act or omission, or by such unsafe  
439 machinery, way or appliances as would, if death had not ensued,  
440 have entitled the party injured or damaged thereby to maintain an  
441 action and recover damages in respect thereof, or whenever the  
442 death of any person shall be caused by the breach of any warranty,  
443 express or implied, of the purity or fitness of any foods, drugs,  
444 medicines, beverages, tobacco or any and all other articles or  
445 commodities intended for human consumption, as would, had the  
446 death not ensued, have entitled the person injured or made ill or  
447 damaged thereby, to maintain an action and recover damages in  
448 respect thereof, and such deceased person shall have left a widow  
449 or children or both, or husband or father or mother, or sister, or  
450 brother, the person or corporation, or both that would have been

451 liable if death had not ensued, and the representatives of such  
452 person shall be liable for damages, notwithstanding the death, and  
453 the fact that death was instantaneous shall in no case affect the  
454 right of recovery. The action for such damages may be brought in  
455 the name of the personal representative of the deceased person for  
456 the benefit of all persons entitled under the law to recover, or  
457 by widow for the death of her husband, or by the husband for the  
458 death of the wife, or by the parent for the death of a child, or  
459 in the name of a child, or in the name of a child for the death of  
460 a parent, or by a brother for the death of a sister, or by a  
461 sister for the death of a brother, or by a sister for the death of  
462 a sister, or a brother for the death of a brother, or all parties  
463 interested may join in the suit, and there shall be but one (1)  
464 suit for the same death which shall ensue for the benefit of all  
465 parties concerned, but the determination of such suit shall not  
466 bar another action unless it be decided on its merits. Except as  
467 otherwise provided in Section 10 of House Bill No. 19, 2002 Third  
468 Extraordinary Session, in such action the party or parties suing  
469 shall recover such damages allowable by law as the jury may  
470 determine to be just, taking into consideration all the damages of  
471 every kind to the decedent and all damages of every kind to any  
472 and all parties interested in the suit.

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

479 Any person entitled to bring a wrongful death action may  
480 assert or maintain a claim for any breach of expressed warranty or  
481 for any breach of implied warranty. A wrongful death action may  
482 be maintained or asserted for strict liability in tort or for any  
483 cause of action known to the law for which any person,  
484 corporation, legal representative or entity would be liable for  
485 damages if death had not ensued.

486 In an action brought pursuant to the provisions of this

487 section by the widow, husband, child, father, mother, sister or  
488 brother of the deceased, or by all interested parties, such party  
489 or parties may recover as damages property damages and funeral,  
490 medical or other related expenses incurred by or for the deceased  
491 as a result of such wrongful or negligent act or omission or  
492 breach of warranty, whether an estate has been opened or not. Any  
493 amount, but only such an amount, as may be recovered for property  
494 damage, funeral, medical or other related expenses shall be  
495 subject only to the payment of the debts or liabilities of the  
496 deceased for property damages, funeral, medical or other related  
497 expenses. All other damages recovered under the provisions of  
498 this section shall not be subject to the payment of the debts or  
499 liabilities of the deceased, except as hereinafter provided, and  
500 such damages shall be distributed as follows:

501 Damages for the injury and death of a married man shall be  
502 equally distributed to his wife and children, and if he has no  
503 children all shall go to his wife; damages for the injury and  
504 death of a married woman shall be equally distributed to the  
505 husband and children, and if she has no children all shall go to  
506 the husband; and if the deceased has no husband or wife, the  
507 damages shall be equally distributed to the children; if the  
508 deceased has no husband, nor wife, nor children, the damages shall  
509 be distributed equally to the father, mother, brothers and  
510 sisters, or such of them as the deceased may have living at his or  
511 her death. If the deceased have neither husband, nor wife, nor  
512 children, nor father, nor mother, nor sister, nor brother, then  
513 the damages shall go to the legal representative, subject to debts  
514 and general distribution, and the fact that the deceased was  
515 instantly killed shall not affect the right of the legal  
516 representative to recover. All references in this section to  
517 children shall include descendants of a deceased child, such  
518 descendants to take the share of the deceased child by  
519 representation. There shall not be, in any case, a distinction  
520 between the kindred of the whole and half blood of equal degree.  
521 The provisions of this section shall apply to illegitimate  
522 children on account of the death of the mother and to the mother

523 on account of the death of an illegitimate child or children, and  
524 they shall have all the benefits, rights and remedies conferred by  
525 this section on legitimates. The provisions of this section shall  
526 apply to illegitimate children on account of the death of the  
527 natural father and to the natural father on account of the death  
528 of the illegitimate child or children, and they shall have all the  
529 benefits, rights and remedies conferred by this section on  
530 legitimates, if the survivor has or establishes the right to  
531 inherit from the deceased under Section 91-1-15.

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

537 **SECTION 12.** The Legislature recognizes that attorneys should  
538 be licensed by the State of Mississippi before engaging in any  
539 solicitation of clients in this state. Such licensing of  
540 attorneys protects the people of Mississippi in that The  
541 Mississippi Bar has direct jurisdiction over attorneys licensed by  
542 it. The Mississippi Supreme Court can act against such licensed  
543 attorneys in the event that such licensed attorneys commit  
544 violations of Mississippi law, court rules and rules of ethics for  
545 attorneys. The Legislature finds that this section is necessary  
546 for the protection of the people of Mississippi. An attorney who  
547 is not admitted to The Mississippi Bar shall not advertise his  
548 legal services in this state for the purpose of soliciting  
549 prospective clients for commencement of any civil action in this  
550 state, or for the purpose of soliciting clients for any civil  
551 action already commenced or pending in this state, unless the  
552 attorney who is not a member of The Mississippi Bar has associated  
553 an attorney who (a) is a member of The Mississippi Bar; and (b)  
554 will be associated and actively working on substantial aspects in  
555 any civil action filed on behalf of a client solicited as a result  
556 of the advertisement. A law firm composed of both attorneys who  
557 are members of The Mississippi Bar and attorneys who are not  
558 members of The Mississippi Bar may advertise in this state if a

559 majority of the members of the firm are members of The Mississippi  
560 Bar. For purposes of this section, a listing in the residential  
561 or business section of the white pages of a telephone book shall  
562 not be an advertisement.

563 **SECTION 13.** If a party files any pleading in a civil action  
564 which in the opinion of the court is frivolous, the court may  
565 impose an assessment of not more than One Thousand Dollars  
566 (\$1,000.00) against each party and attorney of record for the  
567 party filing the pleading. Such assessment shall be in addition  
568 to any other assessments, penalties or sanctions authorized by law  
569 or otherwise. The proceeds of any assessment imposed under this  
570 section shall be paid to the Mississippi Volunteer Lawyers  
571 Project, Inc.

572 **SECTION 14.** Sections 11-3-23 and 11-3-25, Mississippi Code  
573 of 1972, which provide for the assessment of a penalty on the  
574 appeal of certain judgments to the Supreme Court, are repealed.

575 **SECTION 15.** If any provision of this act is held by a court  
576 to be invalid, such invalidity shall not affect the remaining  
577 provisions of this act, and to this end the provisions of this act  
578 are declared severable.

579 **SECTION 16.** This act shall take effect and be in force from  
580 and after January 1, 2003, and shall apply to all causes of action  
581 filed on or after that date.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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 AMEND SECTION  
7 85-5-7, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE BILL NO. 2,  
8 2002 THIRD EXTRAORDINARY SESSION, TO REVISE THE LIMITATION OF  
9 JOINT AND SEVERAL LIABILITY FOR DAMAGES CAUSED BY TWO OR MORE  
10 PERSONS; TO CREATE NEW SECTION 11-1-64, MISSISSIPPI CODE OF 1972,  
11 TO PROVIDE FOR THE DISMISSAL OF A SELLER WHOSE ONLY LIABILITY IS  
12 AS A SELLER IN THE STREAM OF COMMERCE; TO AMEND SECTION 11-1-63,  
13 MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIRED TIME OF NOTICE TO  
14 A MANUFACTURER IN ORDER FOR A SELLER TO BE INDEMNIFIED, AND TO  
15 PROVIDE FOR AN EVIDENTIARY HEARING TO DETERMINE IF A SELLER OF A  
16 PRODUCT IS AN INNOCENT SELLER; TO AMEND SECTION 11-1-65,  
17 MISSISSIPPI CODE OF 1972, TO IMPOSE A LIMITATION ON PUNITIVE  
18 DAMAGES; TO PROVIDE IMMUNITY FOR A PREMISES OWNER UNDER CERTAIN  
19 CIRCUMSTANCES; TO PROVIDE THAT CIVIL ACTIONS SHALL NOT BE ASSIGNED  
20 TO A JUDGE UNTIL AT LEAST ONE DEFENDANT HAS FILED A RESPONSIVE  
21 PLEADING; TO PROVIDE THAT THE AUTHORITY TO SUE ANY FIREARMS OR



22 AMMUNITION MANUFACTURER, DISTRIBUTOR OR DEALER ON BEHALF OF LOCAL  
23 GOVERNMENTAL ENTITIES FOR CERTAIN CAUSES OF ACTION SHALL BE  
24 EXCLUSIVELY RESERVED TO THE STATE; TO PROHIBIT RECOVERY OF HEDONIC  
25 DAMAGES IN CIVIL ACTIONS; TO AMEND SECTION 11-7-13, MISSISSIPPI  
26 CODE OF 1972, IN CONFORMITY THERETO; TO PROHIBIT ATTORNEY  
27 ADVERTISING BY ATTORNEYS NOT ADMITTED TO PRACTICE IN MISSISSIPPI;  
28 TO PROVIDE AN ASSESSMENT FOR FILING FRIVOLOUS CLAIMS; TO REPEAL  
29 SECTIONS 11-3-23 AND 11-3-25, MISSISSIPPI CODE OF 1972, WHICH  
30 PROVIDE FOR THE ASSESSMENT OF A PENALTY ON CERTAIN JUDGMENTS  
31 APPEALED TO THE SUPREME COURT; AND FOR RELATED PURPOSES.

CONFEREES FOR THE HOUSE

CONFEREES FOR THE SENATE

**X**

\_\_\_\_\_  
Percy W. Watson

\_\_\_\_\_  
Bennie L. Turner

**X**

\_\_\_\_\_  
Mary Ann Stevens

**X**

\_\_\_\_\_  
Thomas E. Robertson

**X**

\_\_\_\_\_  
Joseph L. Warren

**X**

\_\_\_\_\_  
Tommy Dickerson