

By: Representative Denny

To: Judiciary A

## HOUSE BILL NO. 90

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO  
2 REVISE VENUE IN CIVIL ACTIONS; TO AMEND SECTION 11-1-64,  
3 MISSISSIPPI CODE OF 1972, TO REVISE THE INNOCENT SELLER LAW; TO  
4 AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO REVISE THE CAP  
5 ON PUNITIVE DAMAGES; TO AMEND SECTION 11-1-60, MISSISSIPPI CODE OF  
6 1972, TO CAP NONECONOMIC DAMAGES IN ALL CIVIL ACTIONS; AND FOR  
7 RELATED PURPOSES.

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

9 **SECTION 1.** Section 11-11-3, Mississippi Code of 1972, is  
10 amended as follows:

11 11-11-3. (1) Civil actions of which the circuit court has  
12 original jurisdiction shall be commenced in the county where the  
13 defendant resides or in the county where the alleged act or  
14 omission occurred or where the event that caused the injury  
15 occurred. Venue shall be proper as to each and every named  
16 defendant and plaintiff. If the venue is improper as to any  
17 party, then the claims involving that party shall be severed and  
18 transferred to a county where venue is proper as to such claims,  
19 or dismissed without prejudice if there exists no county of proper  
20 venue.

21 (2) If a civil action is brought in an improper county, such  
22 action may be transferred to the proper county pursuant to Section  
23 11-11-17.

24 **SECTION 2.** Section 11-1-64, Mississippi Code of 1972, is  
25 amended as follows:

26 11-1-64. (1) In any civil action alleging damages caused by  
27 a product, a product seller other than a manufacturer shall not be  
28 liable for a latent defect if the seller is a mere conduit who  
29 purchased the product from a reputable manufacturer. It is the

30 intent of this section to insulate innocent sellers who are not  
31 actively negligent from forum-driven lawsuits.

32 (2) A product seller shall not be considered to have failed  
33 to exercise reasonable care with respect to a product, based upon  
34 an alleged failure to inspect the product, if there was no  
35 reasonable opportunity to inspect the product; or the inspection,  
36 in the exercise of reasonable care, would not have revealed that  
37 the product was defective.

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

41 \* \* \*

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

44 11-1-65. (1) In any action in which punitive damages are  
45 sought:

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

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

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

59 (d) The court shall determine whether the issue of  
60 punitive damages may be submitted to the trier of fact; and, if  
61 so, the trier of fact shall determine whether to award punitive  
62 damages and in what amount.

63           (e) In all cases involving an award of punitive  
64 damages, the fact finder, in determining the amount of punitive  
65 damages, shall consider, to the extent relevant, the following:  
66 the defendant's financial condition and net worth; the nature and  
67 reprehensibility of the defendant's wrongdoing, for example, the  
68 impact of the defendant's conduct on the plaintiff, or the  
69 relationship of the defendant to the plaintiff; the defendant's  
70 awareness of the amount of harm being caused and the defendant's  
71 motivation in causing such harm; the duration of the defendant's  
72 misconduct and whether the defendant attempted to conceal such  
73 misconduct; and any other circumstances shown by the evidence that  
74 bear on determining a proper amount of punitive damages. The  
75 trier of fact shall be instructed that the primary purpose of  
76 punitive damages is to punish the wrongdoer and deter similar  
77 misconduct in the future by the defendant and others while the  
78 purpose of compensatory damages is to make the plaintiff whole.

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

84                       (ii) In determining whether the award is  
85 excessive, the court shall take into consideration the following  
86 factors:

87                               1. Whether there is a reasonable relationship  
88 between the punitive damage award and the harm likely to result  
89 from the defendant's conduct as well as the harm that actually  
90 occurred;

91                               2. The degree of reprehensibility of the  
92 defendant's conduct, the duration of that conduct, the defendant's  
93 awareness, any concealment, and the existence and frequency of  
94 similar past conduct;

95                   3. The financial condition and net worth of  
96 the defendant; and

97                   4. In mitigation, the imposition of criminal  
98 sanctions on the defendant for its conduct and the existence of  
99 other civil awards against the defendant for the same conduct.

100           (2) The seller of a product other than the manufacturer  
101 shall not be liable for punitive damages unless the seller  
102 exercised substantial control over that aspect of the design,  
103 testing, manufacture, packaging or labeling of the product that  
104 caused the harm for which recovery of damages is sought; the  
105 seller altered or modified the product, and the alteration or  
106 modification was a substantial factor in causing the harm for  
107 which recovery of damages is sought; the seller had actual  
108 knowledge of the defective condition of the product at the time he  
109 supplied same; or the seller made an express factual  
110 representation about the aspect of the product which caused the  
111 harm for which recovery of damages is sought.

112           (3) In all civil actions where an entitlement to punitive  
113 damages shall have been established under applicable laws, no  
114 award of punitive damages shall exceed the greater of three (3)  
115 times the amount of the total compensatory damages awarded to the  
116 plaintiff in an action or Three Million Dollars (\$3,000,000.00);  
117 however, if the defendant is an individual or a business with less  
118 than fifty (50) full-time employees, an award of punitive damages  
119 shall not exceed two (2) times the amount of the plaintiff's  
120 compensatory damages or Two Million Dollars (\$2,000,000.00) or  
121 three percent (3%) of such defendant's net worth, whichever is  
122 less, unless the finder of fact and court find by clear and  
123 convincing evidence that the defendant acted with criminal intent  
124 to cause serious physical bodily injury. This restriction shall  
125 not be disclosed to the trier of fact, but shall be applied by the  
126 court to any punitive damages verdict.

127           (4) Nothing in this section shall be construed as creating a  
128 right to an award of punitive damages or to limit the duty of the  
129 court, or the appellate courts, to scrutinize all punitive damage  
130 awards, ensure that all punitive damage awards comply with  
131 applicable procedural, evidentiary and constitutional  
132 requirements, and to order remittitur where appropriate.

133           (5) Subsections (1) and (2) of this section shall not apply  
134 to:

135                   (a) Contracts;

136                   (b) Libel and slander; or

137                   (c) Causes of action for persons and property arising  
138 out of asbestos.

139           **SECTION 4.** Section 11-1-60, Mississippi Code of 1972, is  
140 amended as follows:

141           11-1-60. (1) For the purposes of this section, the  
142 following words and phrases shall have the meanings ascribed  
143 herein unless the context clearly requires otherwise:

144                   (a) "Noneconomic damages" means subjective,  
145 nonpecuniary damages arising from death, pain, suffering,  
146 inconvenience, mental anguish, worry, emotional distress, loss of  
147 society and companionship, loss of consortium, bystander injury,  
148 physical impairment, injury to reputation, humiliation,  
149 embarrassment, loss of the enjoyment of life, hedonic damages,  
150 other nonpecuniary damages, and any other theory of damages such  
151 as fear of loss, illness or injury. The term "noneconomic  
152 damages" shall not include damages for disfigurement, nor does it  
153 include punitive or exemplary damages.

154                   (b) "Actual economic damages" means objectively  
155 verifiable pecuniary damages arising from medical expenses and  
156 medical care, rehabilitation services, custodial care,  
157 disabilities, loss of earnings and earning capacity, loss of  
158 income, burial costs, loss of use of property, costs of repair or  
159 replacement of property, costs of obtaining substitute domestic

160 services, loss of employment, loss of business or employment  
161 opportunities, and other objectively verifiable monetary losses.

162 (c) "Provider of health care" means a licensed  
163 physician, psychologist, osteopath, dentist, nurse, nurse  
164 practitioner, physician assistant, pharmacist, podiatrist,  
165 optometrist, chiropractor, institution for the aged or infirm,  
166 hospital, licensed pharmacy or any legal entity which may be  
167 liable for their acts or omissions.

168 (2) (a) In any civil action compensation for the  
169 noneconomic damages suffered shall not exceed the amount of Two  
170 Hundred Fifty Thousand Dollars (\$250,000.00).

171 It is the intent of this section to limit all noneconomic  
172 damages to the above.

173 (b) The trier of fact shall not be advised of the  
174 limitations imposed by this subsection (2) and the judge shall  
175 appropriately reduce any award of noneconomic damages that exceeds  
176 the applicable limitation.

177 \* \* \*

178 **SECTION 5.** This act shall take effect and be in force from  
179 and after July 1, 2004, and shall apply to all causes of action  
180 filed on or after that date.