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To: Judiciary A

HOUSE BILL NO. 1579

1 AN ACT TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO
 2 REVISE VENUE IN GENERAL CIVIL ACTIONS; TO AMEND SECTION 11-1-60,
 3 MISSISSIPPI CODE OF 1972, TO PROVIDE LIMITATIONS ON NONECONOMIC
 4 DAMAGES IN ALL CIVIL ACTIONS; TO AMEND SECTION 11-1-63,
 5 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PRODUCT SELLER OTHER
 6 THAN A MANUFACTURER SHALL NOT BE LIABLE FOR A LATENT DEFECT IF THE
 7 SELLER IS A MERE CONDUIT WHO PURCHASED THE PRODUCT FROM A
 8 REPUTABLE MANUFACTURER; TO AMEND SECTION 11-1-65, MISSISSIPPI CODE
 9 OF 1972, TO PROHIBIT MULTIPLE PUNITIVE DAMAGE AWARDS FOR THE SAME
 10 CONDUCT OF A DEFENDANT EXCEPT IN CERTAIN CASES, AND TO PROHIBIT
 11 PUNITIVE DAMAGES AGAINST A DEFENDANT FOR ANY REGULATED ACTIVITY
 12 CONDUCTED IN COMPLIANCE WITH FEDERAL AND STATE REGULATIONS; TO
 13 AMEND SECTION 11-1-66, MISSISSIPPI CODE OF 1972, TO REVISE THE
 14 IMMUNITY OF PREMISE OWNERS FROM CIVIL LIABILITY; TO AMEND SECTION
 15 11-15-1, MISSISSIPPI CODE OF 1972, TO ESTABLISH THE VALIDITY AND
 16 ENFORCEABILITY OF AN ARBITRATION AGREEMENT; TO AMEND SECTION
 17 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE THE LIMITATION OF
 18 JOINT AND SEVERAL LIABILITY FOR DAMAGES CAUSED BY TWO OR MORE
 19 PERSONS; TO REPEAL SECTION 11-1-64, MISSISSIPPI CODE OF 1972,
 20 WHICH PROVIDES THE PROCEDURE FOR DISMISSING A DEFENDANT WHOSE
 21 LIABILITY IS BASED SOLELY ON HIS STATUS AS A SELLER IN THE STREAM
 22 OF COMMERCE; AND FOR RELATED PURPOSES.

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

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

26 11-11-3. (1) (a) Venue for civil actions of which the
 27 circuit court has original jurisdiction shall be * * * in the
 28 county where the first act or omission giving rise to the cause of
 29 action occurred * * *.

30 (b) In any civil action where more than one (1)
 31 plaintiff is joined, each plaintiff shall independently establish
 32 proper venue and it is not sufficient that venue is proper for
 33 other plaintiffs joined in the civil action.

34 (c) In any civil action where more than one (1)
 35 defendant is named, venue must be proper as to each and every

36 defendant and it is not sufficient that venue is proper for other
37 defendants joined in the civil action.

38 (d) Where multiple claims or causes of action are
39 combined in one (1) lawsuit, venue must be proper as to each
40 separate claim or cause of action.

41 (e) If the venue is improper as to any claim or cause
42 of action by any plaintiff against any defendant, then the claims
43 involving that plaintiff and defendant that are not in the proper
44 venue shall be severed and transferred to the county where venue
45 is proper as to such claim or cause of action. If there is no
46 proper venue for a claim for any reason, including because the
47 first act or omission giving rise to a claim did not occur within
48 a Mississippi county, such claim shall be dismissed without
49 prejudice.

50 (2) A nonresident of the state may not bring an action in a
51 court of this state unless all or a substantial part of the acts
52 or omissions giving rise to the claim asserted occurred in this
53 state.

54 (3) (a) If a court of this state, on written motion of a
55 party, finds that in the interest of justice and for the
56 convenience of the parties and witnesses a claim or action would
57 be more properly heard in a forum outside this state or in a
58 different county within this state, the court shall decline to
59 exercise jurisdiction under the doctrine of forum nonconveniens.
60 As to a claim or action that would be more properly heard in a
61 forum outside this state, the court shall dismiss the claim or
62 action. As to a claim or action that would be more properly heard
63 in a different county within the state, the venue shall be
64 transferred to the appropriate county. In determining whether to
65 grant a motion to dismiss an action or to transfer venue under the
66 doctrine of forum nonconveniens, the court shall give
67 consideration to the following factors:

68 (i) Relative ease of access to sources of proof;

69 (ii) Availability and cost of compulsory process
70 for attendance of unwilling witnesses;

71 (iii) Possibility of viewing of the premises, if
72 viewing would be appropriate to the action;

73 (iv) Unnecessary expense or trouble to the
74 defendant not necessary to the plaintiff's own right to pursue his
75 remedy;

76 (v) Administrative difficulties for the forum
77 courts;

78 (vi) Existence of local interests in deciding the
79 case at home; and

80 (vii) Plaintiff's choice of forum should rarely be
81 disturbed.

82 (b) A court may not dismiss a claim under this
83 subsection until the defendant files with the court or with the
84 clerk of the court a written stipulation that, with respect to a
85 new action on the claim commenced by the plaintiff, the defendant
86 waives the right to assert a statute of limitations defense in all
87 other states of the United States in which the claim was not
88 barred by limitations at the time the claim was filed in this
89 state as necessary to effect a tolling of the limitations periods
90 in those states beginning on the date the claim was filed in this
91 state and ending on the date the claim is dismissed. The court
92 may not dismiss a claim under this subsection until the defendant
93 files with the court or with the clerk of the court a written
94 stipulation that, with respect to a new action on the claim
95 commenced by the plaintiff in another state of the United States,
96 the plaintiff may elect that the plaintiff and the defendant may
97 rely on responses to discovery already provided under the
98 Mississippi Rules of Civil Procedure, plus any additional
99 discovery that may be conducted under the rules of civil procedure
100 in another state, or use responses to discovery already provided

101 and conduct additional discovery as permitted under the rules of
102 civil procedures in the other state.

103 (c) To comply with paragraph (a) of this subsection in
104 relation to an action that involves both claims that would and
105 would not be more properly heard in a forum outside this state or
106 in a different county within this state, a court shall consider
107 each claim individually and shall sever from the action the claims
108 that are subject to paragraph (a) of this subsection.

109 **SECTION 2.** Section 11-1-60, Mississippi Code of 1972, is
110 amended as follows:

111 11-1-60. (1) For the purposes of this section, the
112 following words and phrases shall have the meanings ascribed
113 herein unless the context clearly requires otherwise:

114 (a) "Noneconomic damages" means subjective,
115 nonpecuniary damages arising from death, pain, suffering,
116 inconvenience, mental anguish, worry, emotional distress, loss of
117 society and companionship, loss of consortium, bystander injury,
118 physical impairment, disfigurement, injury to reputation,
119 humiliation, embarrassment, * * * other nonpecuniary damages, and
120 any other theory of damages such as fear of loss, illness or
121 injury. The term "noneconomic damages" shall not include * * *
122 punitive or exemplary damages.

123 (b) "Actual economic damages" means objectively
124 verifiable pecuniary damages arising from medical expenses and
125 medical care, rehabilitation services, custodial care,
126 disabilities, loss of earnings and earning capacity, loss of
127 income, burial costs, loss of use of property, costs of repair or
128 replacement of property, costs of obtaining substitute domestic
129 services, loss of employment, loss of business or employment
130 opportunities, and other objectively verifiable monetary losses.

131 * * *

132 (2) (a) Regardless of the number of parties against whom
133 the action is brought or the number of separate claims or actions

134 brought with respect to the same injury, in any claim for injury
135 the aggregate amount recoverable for noneconomic damages by the
136 plaintiff shall not exceed Two Hundred Fifty Thousand Dollars
137 (\$250,000.00) for causes of action filed on or after July 1, 2004.

138 (b) The jury shall not be advised of the limitations
139 imposed by this subsection (2) and the judge shall appropriately
140 reduce any award of noneconomic damages that exceeds the
141 applicable limitation.

142 * * *

143 (3) Nothing in this section shall be construed to impose a
144 limitation on * * * actual economic damages.

145 **SECTION 3.** Section 11-1-63, Mississippi Code of 1972, is
146 amended as follows:

147 11-1-63. Subject to the provisions of Section 11-1-64, in
148 any action for damages caused by a product except for commercial
149 damage to the product itself:

150 (a) The manufacturer or seller of the product shall not
151 be liable if the claimant does not prove by the preponderance of
152 the evidence that at the time the product left the control of the
153 manufacturer or seller:

154 (i) 1. The product was defective because it
155 deviated in a material way from the manufacturer's specifications
156 or from otherwise identical units manufactured to the same
157 manufacturing specifications, or

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

160 3. The product was designed in a defective
161 manner, or

162 4. The product breached an express warranty
163 or failed to conform to other express factual representations upon
164 which the claimant justifiably relied in electing to use the
165 product; and

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

168 (iii) The defective and unreasonably dangerous
169 condition of the product proximately caused the damages for which
170 recovery is sought.

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

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

188 (ii) An adequate product warning or instruction is
189 one that a reasonably prudent person in the same or similar
190 circumstances would have provided with respect to the danger and
191 that communicates sufficient information on the dangers and safe
192 use of the product, taking into account the characteristics of,
193 and the ordinary knowledge common to an ordinary consumer who
194 purchases the product; or in the case of a prescription drug,
195 medical device or other product that is intended to be used only
196 under the supervision of a physician or other licensed
197 professional person, taking into account the characteristics of,
198 and the ordinary knowledge common to, a physician or other

199 licensed professional who prescribes the drug, device or other
200 product.

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

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

217 (f) In any action alleging that a product is defective
218 because of its design pursuant to paragraph (a)(i)3 of this
219 section, the manufacturer or product seller shall not be liable if
220 the claimant does not prove by the preponderance of the evidence
221 that at the time the product left the control of the manufacturer
222 or seller:

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

227 (ii) The product failed to function as expected
228 and there existed a feasible design alternative that would have to
229 a reasonable probability prevented the harm. A feasible design
230 alternative is a design that would have to a reasonable
231 probability prevented the harm without impairing the utility,

232 usefulness, practicality or desirability of the product to users
233 or consumers.

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

249 (ii) Subparagraph (i) shall not apply unless the
250 seller has given prompt notice of the suit to the manufacturer
251 within ninety (90) days of the service of the complaint against
252 the seller.

253 (h) In any action alleging that a product is defective
254 pursuant to paragraph (a) of this section, a product seller other
255 than a manufacturer shall not be liable for a latent defect if the
256 seller is a mere conduit who purchased the product from a
257 reputable manufacturer. It is the intent of this section to
258 insulate innocent sellers who are not actively negligent from
259 forum driven lawsuits. A product seller shall not be considered
260 to have failed to exercise reasonable care with respect to a
261 product based upon an alleged failure to inspect the product if
262 there was no reasonable opportunity to inspect the product, or if
263 the inspection in the exercise of reasonable care would not have
264 revealed that the product was defective.

265 (i) There is a rebuttable presumption that a product is
266 free from any defect or defective condition where the alleged
267 defect in the plans or designs for the product or the methods and
268 techniques of manufacturing, inspecting and testing the product
269 were in conformity with government standards established for that
270 industry which were in existence at the time the plans or designs
271 for the product or the methods and techniques of manufacturing,
272 inspecting and testing the product were adopted.

273 (j) For purposes of this section, the term "product"
274 shall include real estate and the term "seller" shall include real
275 estate brokers/licensees.

276 (k) Nothing in this section shall be construed to
277 eliminate any common law defense to an action for damages caused
278 by a product.

279 **SECTION 4.** Section 11-1-65, Mississippi Code of 1972, is
280 amended as follows:

281 11-1-65. (1) For the purposes of this section,
282 "compensatory" means the amount of money awarded to a party to
283 compensate the party for his or her actual, economic and
284 noneconomic damages.

285 (2) In any action in which punitive damages are sought:

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

291 (b) Punitive damages shall not be awarded against a
292 defendant for any activity that is subject to regulation by any
293 governmental entity, if the regulated activity was in compliance
294 with applicable regulations of the governmental entity.

295 (c) Punitive damages shall not be awarded against any
296 defendant based upon a product's manufacture, design, formulation,

297 inspection, testing, packaging, inherent danger, labeling or
298 warning which caused the claimant's harm and which complied with:

299 (i) Any federal statute in effect at the time the
300 product was produced;

301 (ii) Any administrative regulation in effect at
302 the time the product was produced that was promulgated by an
303 agency of the federal government which had responsibility to
304 regulate the safety of the product or to establish safety
305 standards for the product pursuant to a federal statute;

306 (iii) Any approval or certification made by an
307 agency of the federal government before the product was marketed;

308 (iv) Any state or local statute, ordinance, agency
309 regulation, agency certification applicable to the place where the
310 harm to the plaintiff allegedly occurred.

311 (d) In any action in which the claimant seeks an award
312 of punitive damages, the trier of fact shall first determine
313 whether compensatory damages are to be awarded and in what amount,
314 before addressing any issues related to punitive damages.

315 (e) If, but only if, an award of compensatory damages
316 has been made against a party, the court shall promptly commence
317 an evidentiary hearing before the same trier of fact to determine
318 whether punitive damages may be considered.

319 (f) The court shall determine whether the issue of
320 punitive damages may be submitted to the trier of fact; and, if
321 so, the trier of fact shall determine whether to award punitive
322 damages and in what amount. Only one (1) award of punitive
323 damages may be recovered in this state from a defendant,
324 regardless of the number of claimants who may be harmed by the
325 same or similar repetitive act or omission, except in the case of
326 a defendant who, subsequent to the entry of a judgment imposing
327 liability for an act or omission, persists in the same or similar
328 conduct thereby giving rise to additional causes of action.

329 (g) In all cases involving an award of punitive
330 damages, the fact finder, in determining the amount of punitive
331 damages, shall consider, to the extent relevant, the following:
332 * * * the nature and reprehensibility of the defendant's
333 wrongdoing, for example, the impact of the defendant's conduct on
334 the plaintiff, or the relationship of the defendant to the
335 plaintiff; the defendant's awareness of the amount of harm being
336 caused and the defendant's motivation in causing such harm; the
337 duration of the defendant's misconduct and whether the defendant
338 attempted to conceal such misconduct; and any other circumstances
339 shown by the evidence that bear on determining a proper amount of
340 punitive damages. Financial condition and net worth of the
341 defendant shall only be considered in mitigation of any award.

342 The trier of fact shall be instructed that the primary purpose of
343 punitive damages is to punish the wrongdoer and deter similar
344 misconduct in the future by the defendant and others while the
345 purpose of compensatory damages is to make the plaintiff whole.

346 (h) (i) Before entering judgment for an award of
347 punitive damages the trial court shall ascertain that the award is
348 reasonable in its amount and rationally related to the purpose to
349 punish what occurred giving rise to the award and to deter its
350 repetition by the defendant and others.

351 (ii) In determining whether the award is
352 excessive, the court shall take into consideration the following
353 factors:

354 1. Whether there is a reasonable relationship
355 between the punitive damage award and the harm likely to result
356 from the defendant's conduct as well as the harm that actually
357 occurred;

358 2. The degree of reprehensibility of the
359 defendant's conduct, the duration of that conduct, the defendant's
360 awareness, any concealment, and the existence and frequency of
361 similar past conduct;

362 3. In mitigation, the financial condition and
363 net worth of the defendant; and

364 4. In mitigation, the imposition of criminal
365 sanctions on the defendant for its conduct and the existence of
366 other civil awards against the defendant for the same conduct.

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

379 (4) (a) In any civil action where an entitlement to
380 punitive damages shall have been established under applicable
381 laws, no award of punitive damages shall exceed three (3) times
382 the compensatory damages awarded to the plaintiff; however, in no
383 event shall an award of punitive damages exceed the following:

384 (i) Ten Million Dollars (\$10,000,000.00) for a
385 defendant with a net worth of more than One Billion Dollars
386 (\$1,000,000,000.00);

387 (ii) Seven Million Five Hundred Thousand Dollars
388 (\$7,500,000.00) for a defendant with a net worth of more than
389 Seven Hundred Fifty Million Dollars (\$750,000,000.00) but not more
390 than One Billion Dollars (\$1,000,000,000.00);

391 (iii) Five Million Dollars (\$5,000,000.00) for a
392 defendant with a net worth of more than Five Hundred Million
393 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty
394 Million Dollars (\$750,000,000.00);

395 (iv) Three Million Seven Hundred Fifty Thousand
396 Dollars (\$3,750,000.00) for a defendant with a net worth of more
397 than One Hundred Million Dollars (\$100,000,000.00) but not more
398 than Five Hundred Million Dollars (\$500,000,000.00);

399 (v) Two Million Five Hundred Thousand Dollars
400 (\$2,500,000.00) for a defendant with a net worth of more than
401 Fifty Million Dollars (\$50,000,000.00) but not more than One
402 Hundred Million Dollars (\$100,000,000.00); or

403 (vi) Two percent (2%) of the defendant's net worth
404 for a defendant with a net worth of Fifty Million Dollars
405 (\$50,000,000.00) or less.

406 (b) For the purposes of determining the defendant's net
407 worth in paragraph (a), the amount of the net worth shall be
408 determined in accordance with Generally Accepted Accounting
409 Principles.

410 (c) The limitation on the amount of punitive damages
411 imposed by this subsection (3) shall not be disclosed to the trier
412 of fact, but shall be applied by the court to any punitive damages
413 verdict.

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

418 (i) If the defendant was convicted of a felony
419 under the laws of this state or under federal law which caused the
420 damages or injury; or

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

424 (e) An employer or principal shall not be held liable
425 for compensatory and punitive damages for any act or omission
426 committed by an employee or agent acting outside the scope of, or

427 contrary to, such person's employment or responsibility as an
428 agent or employee.

429 (4) Nothing in this section shall be construed as creating a
430 right to an award of punitive damages or to limit the duty of the
431 court, or the appellate courts, to scrutinize all punitive damage
432 awards, ensure that all punitive damage awards comply with
433 applicable procedural, evidentiary and constitutional
434 requirements, and to order remittitur where appropriate.

435 * * *

436 **SECTION 5.** Section 11-1-66, Mississippi Code of 1972, is
437 amended as follows:

438 11-1-66. (1) No owner, occupant, lessee or managing agent
439 of property shall be civilly liable for failing to prevent or
440 failing to deter any act or omission committed by another person
441 upon such property or premises that is a reckless, wanton,
442 intentionally wrongful, illegal or criminal act.

443 (2) No owner, occupant, lessee or managing agent of property
444 shall be liable for the death or injury of an independent
445 contractor or his employees resulting from dangers that the
446 contractor knew or reasonably should have known.

447 **SECTION 6.** Section 11-15-1, Mississippi Code of 1972, is
448 amended as follows:

449 11-15-1. (1) All persons, except infants and persons of
450 unsound mind, may, by instrument of writing, submit to the
451 decision of one or more arbitrators any controversy which may be
452 existing between them, which might be the subject of an action,
453 and may, in such submission, agree that the court having
454 jurisdiction of the subject matter shall render judgment on the
455 award made pursuant to such submission. In such case, however,
456 should the parties agree upon a court without jurisdiction of the
457 subject matters of the award, the judgment shall be rendered by
458 the court having jurisdiction in the county of the residence of

459 the party, or some one of them, against whom the award shall be
460 made.

461 (2) A written agreement to submit any existing controversy
462 to arbitration or a provision in a written contract to submit to
463 arbitration any controversy thereafter arising between the parties
464 is valid and enforceable, save upon such grounds as exist at law
465 or in equity for the revocation of any contract and not
466 inconsistent with the provisions of this subsection. Unless
467 otherwise stated in writing in the agreement, arbitration
468 agreements are binding upon successors in interest, heirs at law,
469 beneficiaries and wrongful death beneficiaries. This act also
470 applies to arbitration agreements between employers and employees
471 or between their respective representatives, unless otherwise
472 provided in the agreement.

473 **SECTION 7.** Section 85-5-7, Mississippi Code of 1972, is
474 amended as follows:

475 85-5-7. (1) As used in this section "fault" means an act or
476 omission of a person which is a proximate cause of injury or death
477 to another person or persons, damages to property, tangible or
478 intangible, or economic injury, including, but not limited to,
479 negligence, malpractice, strict liability, absolute liability or
480 failure to warn. "Fault" shall not include any tort which results
481 from an act or omission committed with a specific wrongful intent.

482 * * *

483 (2) Except as otherwise provided in subsection (4) of this
484 section, in any civil action based on fault, the liability for
485 damages caused by two (2) or more persons shall be several only,
486 and not joint and several and a joint tort-feasor shall be liable
487 only for the amount of damages allocated to him in direct
488 proportion to his percentage of fault. In assessing percentages
489 of fault an employer and the employer's employee or a principal
490 and the principal's agent shall be considered as one (1) defendant
491 when the liability of such employer or principal has been caused

492 by the wrongful or negligent act or omission of the employee or
493 agent.

494 * * *

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

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

504 (5) In actions involving joint tort-feasors, the trier of
505 fact shall determine the percentage of fault for each party
506 alleged to be at fault, without regard to whether the joint
507 tort-feasor is immune from damages. Fault allocated to an immune
508 tort-feasor or a tort-feasor whose liability is limited by law
509 shall not be reallocated to any other tort-feasor.

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

513 **SECTION 8.** Section 11-1-64, Mississippi Code of 1972, which
514 provides the procedure for dismissing a defendant whose liability
515 is based solely on his status as a seller in the stream of
516 commerce, is hereby repealed.

517 **SECTION 9.** If any provision of this act is held by a court
518 to be invalid, such invalidity shall not affect the remaining
519 provisions of this act, and to this end the provisions of this act
520 are declared severable.

521 **SECTION 10.** This act shall take effect and be in force from
522 and after July 1, 2004, and shall apply to all causes of action
523 filed on or after that date.