

By: Representative Moak

To: Judiciary A

HOUSE BILL NO. 7

1 AN ACT TO BRING FORWARD SECTIONS 11-1-63 AND 11-1-64,
2 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT RELATED TO
3 INNOCENT SELLER REVISIONS; TO PROVIDE RATES FOR COPIES OF MEDICAL
4 RECORDS THAT MAY BE CHARGED BY MEDICAL PROVIDERS AND FACILITIES;
5 TO PROVIDE FOR CLASS ACTIONS; TO REQUIRE STATEWIDE PUBLICATION OF
6 RECALL NOTICES; TO PROVIDE SANCTIONS FOR FRIVOLOUS REMOVALS; TO
7 AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO REVISE
8 EXCEPTIONS FROM PUNITIVE DAMAGES; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 11-1-63, Mississippi Code of 1972, is
11 brought forward as follows:

12 11-1-63. Subject to the provisions of Section 11-1-64, in
13 any action for damages caused by a product except for commercial
14 damage to the product itself:

15 (a) The manufacturer or seller of the product shall not
16 be liable if the claimant does not prove by the preponderance of
17 the evidence that at the time the product left the control of the
18 manufacturer or seller:

19 (i) 1. The product was defective because it
20 deviated in a material way from the manufacturer's specifications
21 or from otherwise identical units manufactured to the same
22 manufacturing specifications, or

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

25 3. The product was designed in a defective
26 manner, or

27 4. The product breached an express warranty
28 or failed to conform to other express factual representations upon
29 which the claimant justifiably relied in electing to use the
30 product; and

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

33 (iii) The defective and unreasonably dangerous
34 condition of the product proximately caused the damages for which
35 recovery is sought.

36 (b) A product is not defective in design or formulation
37 if the harm for which the claimant seeks to recover compensatory
38 damages was caused by an inherent characteristic of the product
39 which is a generic aspect of the product that cannot be eliminated
40 without substantially compromising the product's usefulness or
41 desirability and which is recognized by the ordinary person with
42 the ordinary knowledge common to the community.

43 (c) (i) In any action alleging that a product is
44 defective because it failed to contain adequate warnings or
45 instructions pursuant to paragraph (a)(i)2 of this section, the
46 manufacturer or seller shall not be liable if the claimant does
47 not prove by the preponderance of the evidence that at the time
48 the product left the control of the manufacturer or seller, the
49 manufacturer or seller knew or in light of reasonably available
50 knowledge should have known about the danger that caused the
51 damage for which recovery is sought and that the ordinary user or
52 consumer would not realize its dangerous condition.

53 (ii) An adequate product warning or instruction is
54 one that a reasonably prudent person in the same or similar
55 circumstances would have provided with respect to the danger and
56 that communicates sufficient information on the dangers and safe
57 use of the product, taking into account the characteristics of,
58 and the ordinary knowledge common to an ordinary consumer who
59 purchases the product; or in the case of a prescription drug,
60 medical device or other product that is intended to be used only
61 under the supervision of a physician or other licensed
62 professional person, taking into account the characteristics of,
63 and the ordinary knowledge common to, a physician or other

64 licensed professional who prescribes the drug, device or other
65 product.

66 (d) In any action alleging that a product is defective
67 pursuant to paragraph (a) of this section, the manufacturer or
68 seller shall not be liable if the claimant (i) had knowledge of a
69 condition of the product that was inconsistent with his safety;
70 (ii) appreciated the danger in the condition; and (iii)
71 deliberately and voluntarily chose to expose himself to the danger
72 in such a manner to register assent on the continuance of the
73 dangerous condition.

74 (e) In any action alleging that a product is defective
75 pursuant to paragraph (a)(i)2 of this section, the manufacturer or
76 seller shall not be liable if the danger posed by the product is
77 known or is open and obvious to the user or consumer of the
78 product, or should have been known or open and obvious to the user
79 or consumer of the product, taking into account the
80 characteristics of, and the ordinary knowledge common to, the
81 persons who ordinarily use or consume the product.

82 (f) In any action alleging that a product is defective
83 because of its design pursuant to paragraph (a)(i)3 of this
84 section, the manufacturer or product seller shall not be liable if
85 the claimant does not prove by the preponderance of the evidence
86 that at the time the product left the control of the manufacturer
87 or seller:

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

92 (ii) The product failed to function as expected
93 and there existed a feasible design alternative that would have to
94 a reasonable probability prevented the harm. A feasible design
95 alternative is a design that would have to a reasonable
96 probability prevented the harm without impairing the utility,

97 usefulness, practicality or desirability of the product to users
98 or consumers.

99 (g) (i) The manufacturer of a product who is found
100 liable for a defective product pursuant to paragraph (a) shall
101 indemnify a product seller for the costs of litigation, any
102 reasonable expenses, reasonable attorney's fees and any damages
103 awarded by the trier of fact unless the seller exercised
104 substantial control over that aspect of the design, testing,
105 manufacture, packaging or labeling of the product that caused the
106 harm for which recovery of damages is sought; the seller altered
107 or modified the product, and the alteration or modification was a
108 substantial factor in causing the harm for which recovery of
109 damages is sought; the seller had actual knowledge of the
110 defective condition of the product at the time he supplied same;
111 or the seller made an express factual representation about the
112 aspect of the product which caused the harm for which recovery of
113 damages is sought.

114 (ii) Subparagraph (i) shall not apply unless the
115 seller has given prompt notice of the suit to the manufacturer
116 within ninety (90) days of the service of the complaint against
117 the seller.

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

121 **SECTION 2.** Section 11-1-64, Mississippi Code of 1972, is
122 brought forward as follows:

123 11-1-64. (1) A defendant whose liability is based solely on
124 his status as a seller in the stream of commerce may be dismissed
125 from a products liability claim as provided in this section.

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

130 (3) A defendant may move for dismissal under this section
131 within one hundred eighty (180) days from the date an answer or
132 other responsive pleading is due to be filed or at such later time
133 as may be permitted by the court for good cause shown. The motion
134 shall be accompanied by an affidavit which shall be made under
135 oath and shall state that the defendant is aware of no facts or
136 circumstances upon which a verdict might be reached against him,
137 other than his status as a seller in the stream of commerce.

138 (4) The parties shall have sixty (60) days in which to
139 conduct discovery on the issues raised in the motion and
140 affidavit. The court for good cause shown, may extend the time
141 for discovery, and may enter a protective order pursuant to the
142 rules of civil procedure regarding the scope of discovery on other
143 issues.

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

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

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

158 **SECTION 3.** Any medical provider or hospital or nursing home
159 or other medical facility shall charge no more than the following
160 amounts to patients or their representatives for photocopying any
161 patient's records: Twenty Dollars (\$20.00) for pages one (1)
162 through twenty (20); One Dollar (\$1.00) per page for the next

163 eighty (80) pages; Fifty Cents (50¢) per page for all pages
164 thereafter. Ten percent (10%) of the total charge may be added
165 for postage and handling. Fifteen Dollars (\$15.00) may be
166 recovered by the medical provider or hospital or nursing home or
167 other medical facility for retrieving medical records in archives
168 at a location off the premises where the facility/office is
169 located.

170 **SECTION 4.** (1) One or more members of a class may sue or be
171 sued as representative parties on behalf of all only if (a) the
172 class is so numerous that joinder of all members is impracticable,
173 (b) there are questions of law or fact common to the class, (c)
174 the claims or defenses of the representative parties are typical
175 of the claims or defenses of the class, and (d) the representative
176 parties will fairly and adequately protect the interests of the
177 class.

178 (2) An action may be maintained as a class action if the
179 prerequisites of subsection (1) are satisfied, and in addition:

180 (a) The prosecution of separate actions by or against
181 individual members of the class would create a risk of:

182 (i) Inconsistent or varying adjudications with
183 respect to individual members of the class which would establish
184 incompatible standards of conduct for the party opposing the
185 class, or

186 (ii) Adjudications with respect to individual
187 members of the class which would as a practical matter be
188 dispositive of the interests of the other members not parties to
189 the adjudications or substantially impair or impede their ability
190 to protect their interests; or

191 (b) The party opposing the class has acted or refused
192 to act on grounds generally applicable to the class, thereby
193 making appropriate final injunctive relief or corresponding
194 declaratory relief with respect to the class as a whole; or

195 (c) The court finds that the questions of law or fact
196 common to the members of the class predominate over any questions
197 affecting only individual members, and that a class action is
198 superior to other available methods for the fair and efficient
199 adjudication of the controversy. The matters pertinent to the
200 findings include: (i) the interest of members of the class in
201 individually controlling the prosecution or defense of separate
202 actions; (ii) the extent and nature of any litigation concerning
203 the controversy already commenced by or against members of the
204 class; (iii) the desirability or undesirability of concentrating
205 the litigation of the claims in the particular forum; (iv) the
206 difficulties likely to be encountered in the management of a class
207 action.

208 (3) (a) As soon as practicable after the commencement of an
209 action brought as a class action, the court shall determine by
210 order whether it is to be so maintained. An order under this
211 subdivision may be conditional, and may be altered or amended
212 before the decision on the merits.

213 (b) In any class action maintained under subsection
214 (2)(c), the court shall direct to the members of the class the
215 best notice practicable under the circumstances, including
216 individual notice to all members who can be identified through
217 reasonable effort. The notice shall advise each member that (i)
218 the court will exclude the member from the class if the member so
219 requests by a specified date; (ii) the judgment, whether favorable
220 or not, will include all members who do not request exclusion; and
221 (iii) any member who does not request exclusion may, if the member
222 desires, enter an appearance through counsel.

223 (c) The judgment in an action maintained as a class
224 action under subsection (2)(a) or (2)(b), whether or not favorable
225 to the class, shall include and describe those whom the court
226 finds to be members of the class. The judgment in an action
227 maintained as a class action under subsection (2)(c), whether or

228 not favorable to the class, shall include and specify or describe
229 those to whom the notice provided in subsection (3)(b) was
230 directed, and who have not requested exclusion, and whom the court
231 finds to be members of the class.

232 (d) When appropriate (i) an action may be brought or
233 maintained as a class action with respect to particular issues, or
234 (ii) a class may be divided into subclasses and each subclass
235 treated as a class, and the provisions of this rule shall then be
236 construed and applied accordingly.

237 (4) (a) When a person sues or is sued as a representative
238 of a class, the court must, at an early practicable time,
239 determine by order whether to certify the action as a class
240 action.

241 (b) An order certifying a class action must define the
242 class and the class claims, issues or defenses and must appoint
243 class counsel under subsection (9).

244 (c) An order under this subsection may be altered or
245 amended before final judgment.

246 (d) (i) For any class certified under this section or
247 the court may direct appropriate notice to the class.

248 (ii) For any class certified under this section,
249 the court must direct to class members the best notice practicable
250 under the circumstances, including individual notice to all
251 members who can be identified through reasonable effort. The
252 notice must concisely and clearly state in plain, easily
253 understood language:

- 254 1. The nature of the action;
255 2. The definition of the class certified;
256 3. The class claims, issues or defenses;
257 4. That a class member may enter an
258 appearance through counsel if the member so desires;

259 5. That the court will exclude from the class
260 any member who requests exclusion, stating when and how members
261 may elect to be excluded; and

262 6. The binding effect of a class judgment on
263 class members under this section.

264 (e) The judgment in an action maintained as a class
265 action under subsection (3)(a) or (3)(b), whether or not favorable
266 to the class, shall include and describe those whom the court
267 finds to be members of the class. The judgment in an action
268 maintained as a class action under subsection (3)(c), whether or
269 not favorable to the class, shall include and specify or describe
270 those to whom the notice provided in subsection (4)(b) was
271 directed, and who have not requested exclusion, and whom the court
272 finds to be members of the class.

273 (f) When appropriate (i) an action may be brought or
274 maintained as a class action with respect to particular issues, or
275 (ii) a class may be divided into subclasses and each subclass
276 treated as a class, and the provisions of this rule shall then be
277 construed and applied accordingly.

278 (5) In the conduct of actions to which this rule applies,
279 the court may make appropriate orders:

280 (a) Determining the course of proceedings or
281 prescribing measures to prevent undue repetition or complication
282 in the presentation of evidence or argument;

283 (b) Requiring, for the protection of the members of the
284 class or otherwise for the fair conduct of the action, that notice
285 be given in such manner as the court may direct to some or all of
286 the members of any step in the action, or of the proposed extent
287 of the judgment, or of the opportunity of members to signify
288 whether they consider the representation fair and adequate, to
289 intervene and present claims or defenses, or otherwise to come
290 into the action;

291 (c) Imposing conditions on the representative parties
292 or on intervenors;

293 (d) Requiring that the pleadings be amended to
294 eliminate therefrom allegations as to representation of absent
295 persons, and that the action proceed accordingly;

296 (e) Dealing with similar procedural matters. The
297 orders may be combined and may be altered or amended as may be
298 desirable from time to time.

299 (6) A class action shall not be dismissed or compromised
300 without the approval of the court, and notice of the proposed
301 dismissal or compromise shall be given to all members of the class
302 in such manner as the court directs.

303 (7) (a) (i) The court must approve any settlement,
304 voluntary dismissal or compromise of the claims, issues or
305 defenses of a certified class.

306 (ii) The court must direct notice in a reasonable
307 manner to all class members who would be bound by a proposed
308 settlement, voluntary dismissal or compromise.

309 (iii) The court may approve a settlement,
310 voluntary dismissal or compromise that would bind class members
311 only after a hearing and on finding that the settlement, voluntary
312 dismissal or compromise is fair, reasonable and adequate.

313 (b) The parties seeking approval of a settlement,
314 voluntary dismissal or compromise must file a statement
315 identifying any agreement made in connection with the proposed
316 settlement, voluntary dismissal or compromise.

317 (c) In an action previously certified as a class
318 action, the court may refuse to approve a settlement unless it
319 affords a new opportunity to request exclusion to individual class
320 members who had an earlier opportunity to request exclusion but
321 did not do so.

322 (d) (i) Any class member may object to a proposed
323 settlement, voluntary dismissal or compromise that requires court
324 approval.

325 (ii) An objection made under this subsection may
326 be withdrawn only with the court's approval.

327 (8) A court of appeals may in its discretion permit an
328 appeal from an order of a district court granting or denying class
329 action certification under this rule if application is made to it
330 within ten (10) days after entry of the order. An appeal does not
331 stay proceedings in the district court unless the district judge
332 or the court of appeals so order.

333 (9) (a) Unless a statute provides otherwise, a court that
334 certifies a class must appoint class counsel.

335 (b) An attorney appointed to serve as class counsel
336 must fairly and adequately represent the interests of the class.

337 (c) In appointing class counsel, the court:

338 (i) Must consider:

339 1. The work counsel has done in identifying
340 or investigating potential claims in the action;

341 2. Counsel's experience in handling class
342 actions, other complex litigation and claims of the type asserted
343 in the action;

344 3. Counsel's knowledge of the applicable law;
345 and

346 4. The resources counsel will commit to
347 representing the class;

348 (ii) May consider any other matter pertinent to
349 counsel's ability to fairly and adequately represent the interests
350 of the class;

351 (iii) May direct potential class counsel to
352 provide information on any subject pertinent to the appointment
353 and to propose terms for attorney fees and nontaxable costs; and

354 (iv) May make further orders in connection with
355 the appointment.

356 (d) The court may designate interim counsel to act on
357 behalf of the putative class before determining whether to certify
358 the action as a class action.

359 (e) The court may appoint one or more individual
360 attorneys or one or more law firms as class counsel which the
361 court determines is best able to represent the interests of the
362 class.

363 (f) The order appointing class counsel may include
364 provisions about the award of attorney fees or nontaxable costs.

365 (10) In an action certified as a class action, the court may
366 award reasonable attorney fees and nontaxable costs authorized by
367 law or by agreement of the parties as follows:

368 (a) A claim for an award of attorney fees and
369 nontaxable costs must be made by motion, subject to the provisions
370 of this subsection, at a time set by the court. Notice of the
371 motion must be served on all parties and, for motions by class
372 counsel, directed to class members in a reasonable manner.

373 (b) A class member, or a party from whom payment is
374 sought, may object to the motion.

375 (c) The court may hold a hearing and must find the
376 facts and state its conclusions of law on the motion.

377 (d) The court may refer issues related to the amount of
378 the award to a special master or to a magistrate judge.

379 **SECTION 5.** Any product sold or distributed in Mississippi by
380 any manufacturer or distributor licensed to do business or doing
381 business in Mississippi shall publish statewide notice of any
382 recall of any product or its component parts within thirty (30)
383 days of the recall. Any manufacturer or distributor who fails to
384 provide notice of a recall as required by this section shall, upon
385 conviction, be fined Fifty Thousand Dollars (\$50,000.00) for each

386 violation. The Attorney General shall enforce compliance with the
387 provisions of this section.

388 **SECTION 6.** In any case originally filed in state court, then
389 removed to federal court, and then remanded back to state court, a
390 party may seek sanctions against the removing party and the court,
391 upon hearing the motion, may impose sanctions if the court finds
392 that the removal was frivolous.

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

395 11-1-65. (1) In any action in which punitive damages are
396 sought:

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

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

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

410 (d) The court shall determine whether the issue of
411 punitive damages may be submitted to the trier of fact; and, if
412 so, the trier of fact shall determine whether to award punitive
413 damages and in what amount.

414 (e) In all cases involving an award of punitive
415 damages, the fact finder, in determining the amount of punitive
416 damages, shall consider, to the extent relevant, the following:
417 the defendant's financial condition and net worth; the nature and
418 reprehensibility of the defendant's wrongdoing, for example, the

419 impact of the defendant's conduct on the plaintiff, or the
420 relationship of the defendant to the plaintiff; the defendant's
421 awareness of the amount of harm being caused and the defendant's
422 motivation in causing such harm; the duration of the defendant's
423 misconduct and whether the defendant attempted to conceal such
424 misconduct; and any other circumstances shown by the evidence that
425 bear on determining a proper amount of punitive damages. The
426 trier of fact shall be instructed that the primary purpose of
427 punitive damages is to punish the wrongdoer and deter similar
428 misconduct in the future by the defendant and others while the
429 purpose of compensatory damages is to make the plaintiff whole.

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

435 (ii) In determining whether the award is
436 excessive, the court shall take into consideration the following
437 factors:

438 1. Whether there is a reasonable relationship
439 between the punitive damage award and the harm likely to result
440 from the defendant's conduct as well as the harm that actually
441 occurred;

442 2. The degree of reprehensibility of the
443 defendant's conduct, the duration of that conduct, the defendant's
444 awareness, any concealment, and the existence and frequency of
445 similar past conduct;

446 3. The financial condition and net worth of
447 the defendant; and

448 4. In mitigation, the imposition of criminal
449 sanctions on the defendant for its conduct and the existence of
450 other civil awards against the defendant for the same conduct.

451 (2) The seller of a product other than the manufacturer

452 shall not be liable for punitive damages unless the seller
453 exercised substantial control over that aspect of the design,
454 testing, manufacture, packaging or labeling of the product that
455 caused the harm for which recovery of damages is sought; the
456 seller altered or modified the product, and the alteration or
457 modification was a substantial factor in causing the harm for
458 which recovery of damages is sought; the seller had actual
459 knowledge of the defective condition of the product at the time he
460 supplied same; or the seller made an express factual
461 representation about the aspect of the product which caused the
462 harm for which recovery of damages is sought.

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

466 (i) Twenty Million Dollars (\$20,000,000.00) for a
467 defendant with a net worth of more than One Billion Dollars
468 (\$1,000,000,000.00);

469 (ii) Fifteen Million Dollars (\$15,000,000.00) for
470 a defendant with a net worth of more than Seven Hundred Fifty
471 Million Dollars (\$750,000,000.00) but not more than One Billion
472 Dollars (\$1,000,000,000.00);

473 (iii) Ten Million Dollars (\$10,000,000.00) for a
474 defendant with a net worth of more than Five Hundred Million
475 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty
476 Million Dollars (\$750,000,000.00);

477 (iv) Seven Million Five Hundred Thousand Dollars
478 (\$7,500,000.00) for a defendant with a net worth of more than One
479 Hundred Million Dollars (\$100,000,000.00) but not more than Five
480 Hundred Million Dollars (\$500,000,000.00);

481 (v) Five Million Dollars (\$5,000,000.00) for a
482 defendant with a net worth of more than Fifty Million Dollars
483 (\$50,000,000.00) but not more than One Hundred Million Dollars
484 (\$100,000,000.00); or

485 (vi) Four percent (4%) of the defendant's net
486 worth for a defendant with a net worth of Fifty Million Dollars
487 (\$50,000,000.00) or less.

488 (b) For the purposes of determining the defendant's net
489 worth in paragraph (a), the amount of the net worth shall be
490 determined in accordance with Generally Accepted Accounting
491 Principles.

492 (c) The limitation on the amount of punitive damages
493 imposed by this subsection (3) shall not be disclosed to the trier
494 of fact, but shall be applied by the court to any punitive damages
495 verdict.

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

500 (i) If the defendant was convicted of a felony
501 under the laws of this state or under federal law which caused the
502 damages or injury; or

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

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

509 (4) Nothing in this section shall be construed as creating a
510 right to an award of punitive damages or to limit the duty of the
511 court, or the appellate courts, to scrutinize all punitive damage
512 awards, ensure that all punitive damage awards comply with
513 applicable procedural, evidentiary and constitutional
514 requirements, and to order remittitur where appropriate.

515 (5) * * * This section shall not apply to:

516 (a) Contracts;

517 (b) Libel and slander; * * *

518 (c) Causes of action for persons and property arising
519 out of asbestos;
520 (d) Sexual battery of a minor;
521 (e) Rape;
522 (f) Race-based hate crimes;
523 (g) Illegal abortions;
524 (h) Acts of terrorism or treason;
525 (i) Desecration of a church;
526 (j) Abuse or willful neglect of the aged or infirm;
527 (k) Embezzlement of retirement or investment funds from
528 any pension plan, employee welfare benefit plan, 401(k),
529 individual retirement account or substantially similar investment
530 option;
531 (l) Intentional and unwarranted denial of insurance
532 benefits; and
533 (m) Deprivation of federal or state constitutional
534 rights, including, but not limited to, the right to bear arms.
535 Further, this provision shall not apply where supervisory
536 personnel of the subject employee had actual or constructive
537 knowledge of the conduct warranting punitive damages, participated
538 in any manner in the conduct, concealed such conduct from law
539 enforcement officials or the general public or otherwise ratified
540 the conduct.

541 **SECTION 8.** This act shall take effect and be in force from
542 and after July 1, 2004, and shall apply to all causes of action
543 filed on or after that date.