

Senate Amendments to House Bill No. 1323

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

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

20 **SECTION 1.** Section 75-67-103, Mississippi Code of 1972, is
21 amended as follows:

22 75-67-103. The following words and phrases, when used in
23 this article, shall, for the purposes of this article, have the
24 meanings respectively ascribed to them in this section, except
25 where the context clearly describes and indicates a different
26 meaning:

27 (a) "Person" means and includes every natural person,
28 firm, corporation, copartnership, joint-stock or other association
29 or organization, and any other legal entity whatsoever.

30 (b) "Licensee" means and includes every person holding
31 a valid license issued under the provisions of the Small Loan
32 Privilege Tax Law [Sections 75-67-201 through 75-67-243] of this
33 state, except those specifically exempt by the provisions of this
34 article, who, in addition to any other rights and powers he or it
35 might otherwise possess, engages in the business of lending money
36 either directly or indirectly, to be paid back in monthly
37 installments or other regular installments for periods of more or
38 less than one (1) month, and whether or not the lender requires
39 security from the borrower as indemnity for the repayment of the
40 loan.

41 (c) "Occasional lender" means a person making not more
42 than one (1) loan in any month or not more than twelve (12) loans
43 in any twelve-month period.

44 (d) "Commissioner" means the Commissioner of Banking
45 and Consumer Finance of the State of Mississippi.

(e) "Department" means the Department of Banking and Consumer Finance of the State of Mississippi.

(f) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

(g) "Other charges" means any amounts contracted for or received by any licensee or other person in connection with a loan, other than finance charges as defined in Section 75-17-25.

SECTION 2. Section 75-67-119, Mississippi Code of 1972, is amended as follows:

75-67-119. (1) If any finance charge in excess of that expressly permitted by Section 75-17-21 is contracted for or received, all finance charges and other charges shall be forfeited and may be recovered, whether the contract is executed or executory. If any finance charge is contracted for or received that exceeds the maximum finance charge authorized by law by more than one hundred percent (100%), the principal and all finance charges and other charges shall be forfeited and any amount paid may be recovered by suit. In addition, a licensee * * * who knowingly participated in that violation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Four Thousand Dollars (\$4,000.00) and not less than Five Hundred Dollars (\$500.00), in the discretion of the court. In addition to any action taken in court, the Commissioner of Banking and Consumer Finance shall forthwith cite the licensee to show cause why its license should not be revoked, and proceedings thereon shall be as is specifically provided in the Small Loan Privilege Tax Law (Sections 75-67-201 through 75-67-243).

(2) If any licensee or other person subject to the provisions of this Article 3 contracts for or receives, or participates in contracting for or receiving, other charges in

81 violation of any applicable statutory or common law duty, or which
82 are otherwise unlawful, all those unlawful other charges shall be
83 forfeited and may be recovered, whether the contract is executed
84 or executory. If the unlawful other charges subject to forfeiture
85 under this subsection (2) exceed Five Hundred Dollars (\$500.00) in
86 a single loan transaction, liquidated damages in the amount of
87 three (3) times the unlawful other charges or Three Thousand
88 Dollars (\$3,000.00), whichever is greater, may be recovered. If
89 the unlawful other charges subject to forfeiture under this
90 subsection (2) exceed One Thousand Five Hundred Dollars
91 (\$1,500.00) in a single loan transaction, liquidated damages in
92 the amount of three (3) times the unlawful other charges, or Ten
93 Thousand Dollars (\$10,000.00), whichever is greater, may also be
94 recovered. If the unlawful other charges subject to forfeiture
95 under this subsection (2) are found to have been contracted for or
96 received by means constituting fraud, the consumer shall also be
97 entitled to recover an additional amount equal to three (3) times
98 the amount recovered under this subsection (2), and reasonable
99 attorney's fees as determined by the court.

100 (3) Except as provided in subsection (4) of this section,
101 the remedies and penalties provided in this section shall be the
102 exclusive remedies and penalties for all claims against a licensee
103 or any other person subject to the provisions of this Article 3
104 for contracting for or receiving any finance charge in excess of
105 that expressly permitted by Section 75-17-21; or for violation of
106 any provision of this article or any rule or regulation
107 promulgated under this article or any provision of Title 75,
108 Chapter 17, Mississippi Code of 1972, for contracting for or
109 receiving, or participates in contracting for or receiving, other
110 charges; or in violation of any applicable statutory or common law
111 duty; or which are otherwise unlawful. However, the provisions of
112 Section 85-5-7 apply to causes of action filed under this section.

113 (4) The remedies and penalties provided in this section are
114 supplemental to the defense provided in Section 75-67-127(3) and

115 to the enforcement powers conferred upon the Commissioner of
116 Banking and Consumer Finance.

117 (5) The penalties provided in subsection (2) shall not apply
118 if the licensee discovers the violation or is notified of the
119 violation by the commissioner and within sixty (60) days after
120 discovering the violation, and prior to the receipt of written
121 notice of the violation from the consumer, the licensee notifies
122 the affected consumer of the violation and either refunds or gives
123 credit for the unlawful other charge.

124 (6) Fraud, as that term is used in this section, shall not
125 be found to have occurred in the event written disclosures were
126 provided to the consumer disclosing the other charges in
127 compliance with applicable federal and state disclosure statutes
128 and regulations, including, but not limited to, the federal
129 Consumer Credit Protection Act, as amended, and Regulation Z
130 promulgated thereunder, if the amount of the other charges does
131 not violate any provision of law.

132 **SECTION 3.** Section 11-11-3, Mississippi Code of 1972, is
133 amended as follows:

134 11-11-3. (1) (a) (i) Civil actions of which the circuit
135 court has original jurisdiction shall be commenced in the county
136 where the defendant resides, or, if a corporation, in the county
137 of its principal place of business, or in the county where a
138 substantial alleged act or omission occurred or where a
139 substantial event that caused the injury occurred.

140 (ii) Civil actions alleging a defective product
141 may also be commenced in the county where the plaintiff obtained
142 the product.

143 (b) If venue in a civil action against a nonresident
144 defendant cannot be asserted under paragraph (a) of this
145 subsection (1), a civil action against a nonresident may * * * be
146 commenced in the county where the plaintiff resides or is
147 domiciled.

148 (2) In any civil action where more than one (1) plaintiff is
149 joined, each plaintiff shall independently establish proper venue;

it is not sufficient that venue is proper for any other plaintiff
joined in the civil action.

(3) Notwithstanding subsection (1) of this section:

(a) Any action against a licensed physician, osteopath,
dentist, nurse, nurse practitioner, physician assistant,
psychologist, pharmacist, podiatrist, optometrist, chiropractor,
institution for the aged or infirm, hospital or licensed pharmacy,
including any legal entity which may be liable for their acts or
omissions, for malpractice, negligence, error, omission, mistake,
breach of standard of care or the unauthorized rendering of
professional services shall be brought only in the county in which
the alleged act or omission occurred; and

(b) Any action brought pursuant to Section 75-67-119
shall be brought only in the county in which the credit
transaction occurred or where the plaintiff resides.

(4) (a) If a court of this state, on written motion of a
party, finds that in the interest of justice and for the
convenience of the parties and witnesses a claim or action would
be more properly heard in a forum outside this state or in a
different county of proper venue within this state, the court
shall decline to adjudicate the matter under the doctrine of forum
non conveniens. As to a claim or action that would be more
properly heard in a forum outside this state, the court shall
dismiss the claim or action. As to a claim or action that would
be more properly heard in a different county of proper venue
within this state, the venue shall be transferred to the
appropriate county. In determining whether to grant a motion to
dismiss an action or to transfer venue under the doctrine of forum
non conveniens, the court shall give consideration to the
following factors:

(i) Relative ease of access to sources of proof;
(ii) Availability and cost of compulsory process
for attendance of unwilling witnesses;

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

185 (iv) Unnecessary expense or trouble to the
186 defendant not necessary to the plaintiff's own right to pursue his
187 remedy;

188 (v) Administrative difficulties for the forum
189 courts;

190 (vi) Existence of local interests in deciding the
191 case at home; and

192 (vii) The traditional deference given to a
193 plaintiff's choice of forum.

194 (b) A court may not dismiss a claim under this
195 subsection until the defendant files with the court or with the
196 clerk of the court a written stipulation that, with respect to a
197 new action on the claim commenced by the plaintiff, all the
198 defendants waive the right to assert a statute of limitations
199 defense in all other states of the United States in which the
200 claim was not barred by limitations at the time the claim was
201 filed in this state as necessary to effect a tolling of the
202 limitations periods in those states beginning on the date the
203 claim was filed in this state and ending on the date the claim is
204 dismissed.

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

207 11-1-60. (1) For the purposes of this section, the
208 following words and phrases shall have the meanings ascribed
209 herein unless the context clearly requires otherwise:

210 (a) "Noneconomic damages" means subjective,
211 nonpecuniary damages arising from death, pain, suffering,
212 inconvenience, mental anguish, worry, emotional distress, loss of
213 society and companionship, loss of consortium, bystander injury,
214 physical impairment, disfigurement, injury to reputation,
215 humiliation, embarrassment, * * * other nonpecuniary damages, and
216 any other theory of damages such as fear of loss, illness or
217 injury. The term "noneconomic damages" shall not include * * *
218 punitive or exemplary damages.

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

* * *

(2) Nothing contained in subsection (1) of this section shall be construed as creating a cause of action or as setting forth elements of or types of damages that are or are not recoverable in any type of cause of action.

(3) (a) Except as otherwise provided in Section 2 of House Bill No. 1323, 2004 Regular Session, for causes of action filed on or after May 15, 2004, the aggregate amount recoverable for noneconomic damages by a plaintiff in any claim for injury shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) regardless of the number of parties against whom an action is brought or the number of separate claims or actions brought with respect to the same injury.

(b) The jury shall not be advised of the limitations imposed by this subsection (3), and the judge shall appropriately reduce any award of noneconomic damages that exceeds the applicable limitation.

* * *

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

SECTION 5. Section 11-1-65, Mississippi Code of 1972, is amended as follows:

11-1-65. (1) For the purposes of this section, "compensatory" means the amount of money awarded to a party for the party's actual damages, whether economic or noneconomic.

(2) Except as otherwise provided in Section 2 of House Bill No. 1323, 2004 Regular Session, or other specific provision of

254 statutory law constituting an exclusive remedy, in any action in
255 which punitive damages are sought:

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

261 (b) Punitive damages shall not be awarded against a
262 defendant for any activity that is subject to regulation by a
263 state or federal governmental entity that was in compliance at the
264 time of the activity with specifically applicable regulations of
265 the state or federal governmental entity, provided that the
266 applicable regulations were promulgated for the purpose of
267 protecting the public against the harm or danger that is the
268 subject of the complaint.

269 (c) In any action pursuant to Section 11-1-63, punitive
270 damages shall not be awarded against any defendant who was in
271 compliance with specifically applicable regulations of a state or
272 federal governmental entity, provided that the applicable
273 regulations were promulgated for the purpose of protecting the
274 public against the harm or danger that is the subject of the
275 complaint.

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

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

284 (f) The court shall determine whether the issue of
285 punitive damages may be submitted to the trier of fact; and, if
286 so, the trier of fact shall determine whether to award punitive
287 damages and in what amount.

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

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

309 (ii) In determining whether the award is
310 excessive, the court shall take into consideration the following
311 factors:

312 1. Whether there is a reasonable relationship
313 between the punitive damage award and the harm likely to result
314 from the defendant's conduct as well as the harm that actually
315 occurred;

316 2. The degree of reprehensibility of the
317 defendant's conduct, the duration of that conduct, the defendant's
318 awareness, any concealment, and the existence and frequency of
319 similar past conduct;

320 3. In mitigation, the financial condition and
321 net worth of the defendant; and

322 4. In mitigation, the imposition of criminal
323 sanctions on the defendant for its conduct and the existence of
324 other civil awards against the defendant for the same conduct.

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

335 (3) (a) In any civil action where an entitlement to
336 punitive damages shall have been established under applicable
337 laws, no award of punitive damages shall exceed three (3) times
338 the compensatory damages awarded to the plaintiff; however, in no
339 event shall an award of punitive damages awarded against any
340 defendant in any civil action exceed the following:

341 (i) Ten Million Dollars (\$10,000,000.00) for a
342 defendant with a net worth of more than One Billion Dollars
343 (\$1,000,000,000.00);

344 (ii) Seven Million Five Hundred Thousand Dollars
345 (\$7,500,000.00) for a defendant with a net worth of more than
346 Seven Hundred Fifty Million Dollars (\$750,000,000.00) but not more
347 than One Billion Dollars (\$1,000,000,000.00);

348 (iii) Five Million Dollars (\$5,000,000.00) for a
349 defendant with a net worth of more than Five Hundred Million
350 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty
351 Million Dollars (\$750,000,000.00);

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

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

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

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

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

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

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

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

(e) An employer or principal shall not be held liable
for punitive damages under a theory of vicarious liability.

(f) If the jury awards a plaintiff punitive damages,
the plaintiff also shall be entitled to reasonable attorneys' fees
to be awarded by the court.

(4) Nothing in this section shall be construed as creating a
right to an award of punitive damages or to limit the duty of the
court, or the appellate courts, to scrutinize all punitive damage
awards, ensure that all punitive damage awards comply with

applicable procedural, evidentiary and constitutional requirements, and to order remittitur where appropriate.

* * *

SECTION 6. Section 85-5-7, Mississippi Code of 1972, is amended as follows:

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

* * *

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

* * *

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

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

424 (5) In actions involving joint tort-feasors, the trier of
425 fact shall determine the percentage of fault for each party
426 alleged to be at fault without regard to whether the joint
427 tort-feasor is immune from damages. Fault allocated under this
428 subsection to an immune tort-feasor or a tort-feasor whose
429 liability is limited by law shall not be reallocated to any other
430 tort-feasor.

431 * * *

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

435 **SECTION 7.** Sections 1, 2 and 6 of this act shall take effect
436 and be in force from and after its passage and shall apply to all
437 causes of action not yet reduced to judgment on that date;
438 Sections 3, 4 and 5 of this act shall take effect and be in force
439 from and after May 15, 2004, and shall apply to all causes of
440 action 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 75-67-103, MISSISSIPPI CODE OF 1972,
2 TO DEFINE THE TERM "OTHER CHARGES" UNDER THE SMALL LOAN REGULATORY
3 LAW; TO AMEND SECTION 75-67-119, MISSISSIPPI CODE OF 1972, TO
4 PROVIDE THE REMEDIES AND PENALTIES FOR CONTRACTING FOR OR
5 RECEIVING UNLAWFUL OTHER CHARGES UNDER THE SMALL LOAN REGULATORY
6 LAW; TO AMEND SECTION 11-11-3, MISSISSIPPI CODE OF 1972, TO REVISE
7 VENUE FOR CIVIL ACTIONS AND TO CONFORM TO THE PROVISIONS OF THIS
8 ACT; TO AMEND SECTION 11-1-60, MISSISSIPPI CODE OF 1972, TO
9 PROVIDE LIMITATIONS ON NONECONOMIC DAMAGES AND TO CONFORM TO THE
10 PROVISIONS OF THIS ACT; TO AMEND SECTION 11-1-65, MISSISSIPPI CODE
11 OF 1972, TO PROHIBIT PUNITIVE DAMAGES AGAINST A DEFENDANT FOR ANY
12 REGULATED ACTIVITY CONDUCTED IN COMPLIANCE WITH FEDERAL AND STATE
13 REGULATIONS, TO REVISE THE MAXIMUM AMOUNT OF PUNITIVE DAMAGE
14 AWARDS AND TO CONFORM TO THE PROVISIONS OF THIS ACT; TO AMEND
15 SECTION 85-5-7, MISSISSIPPI CODE OF 1972, TO REVISE THE LIMITATION
16 OF JOINT AND SEVERAL LIABILITY FOR DAMAGES CAUSED BY TWO OR MORE
17 PERSONS AND TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR
18 RELATED PURPOSES.

SS26\HB1323A.3J

John O. Gilbert
Secretary of the Senate