

# YOUNG WILLIAMS TODAY

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## GOVERNOR SIGNS MISSISSIPPI TORT REFORM BILL INTO LAW

Governor Ronnie Musgrove signed into law House Bill 19, or the “Tort Reform Bill,” on December 3, 2002, formally ending one of Mississippi’s most lengthy and controversial legislative debates in recent history. The new tort reform legislation (the “Act”) makes broad, sweeping changes to our civil justice system aimed at improving economic development and remedying the state’s “jackpot justice” image. We wanted to take this opportunity to provide you with information on the most significant of those changes and certain other important issues.

### **Effective Date**

The Act applies to all causes of action filed on or after January 1, 2003.

### **Venue – Where Actions Can Be Filed**

The Act limits venue in civil actions to the court in the county in which the defendant resides, where the alleged act or omission occurred or where the event that caused the injury occurred. Civil actions against non-resident individuals or companies may be brought in the county where the plaintiff resides or is domiciled. A civil action alleging a defective product may be brought in the county where the plaintiff obtained the product. Sections of the Mississippi Code that provided special venue rules for actions against non-residents, railroads and insurance companies were repealed.

### **Joint and Several Liability – Allocation of Fault in Cases Involving Multiple Defendants**

Current law provides for joint and several liability up to 50% of a plaintiff’s recovery. Therefore, a person found to be 1% at fault could have to pay 50% of the plaintiff’s award. The Act modifies this rule so defendants with little fault will not pay a disproportionate amount of damages. For non-economic damages (pain and suffering, etc.), joint liability is eliminated making each defendant only liable for his or her own share of the fault (several liability only). For economic damages, joint liability is eliminated for defendants who are less than 30% at fault; and joint and several liability applies only for defendants who are 30% or more at fault up to 50% of plaintiff’s recovery. This liability structure is the same as the 2002 Medical Malpractice Reform Law, which also goes into effect January 1, 2003. Existing law providing total joint and several liability for defendants found to have consciously and deliberately pursued a common plan or design to commit a tort continues.

**Product Liability – Lawsuits Against Innocent Sellers**

The Act provides some additional protection for merchants (retailers, wholesalers, distributors, etc.) whose potential liability is based solely on their status as a seller of goods in the stream of commerce. In suits filed against manufacturers of defective products, a Mississippi merchant can be dismissed from the suit if it can prove that it sold the defective product without knowledge of such defect. However, the dismissal remains interlocutory (subject to appeal) until the final disposition of the plaintiff’s entire claim. The manufacturer would have to remain in state court. The Act also extends the time in which an innocent seller must give notice for indemnification to a manufacturer from 30 days to 90 days.

**Caps on Punitive Damages**

The Act imposes the following limitations on punitive damage awards against a defendant based on that defendant’s net worth (determined in accordance with Generally Accepted Accounting Principles):

<u>NET WORTH</u>	<u>CAP</u>
\$0 - \$50 million	4% of defendant’s net worth
\$50 million - \$100 million	\$5 million
\$100 million - \$500 million	\$7.5 million
\$500 million - \$750 million	\$10 million
\$750 million - \$1 billion	\$15 million
More than \$1 billion	\$20 million

These caps do not apply to actions brought for damages or an injury resulting from an act or failure to act by the defendant: (1) if the defendant was convicted of a felony which caused the damages or injury; or (2) 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. These exceptions do not apply to an employer of a person who was acting outside of the scope of his employment or responsibility when he committed the act.

**Premises Liability – Suits for the Criminal Acts of Third Parties**

Current case law has been codified by the Act granting immunity to premises owners for failing to prevent the criminal acts of third parties, unless the premises owner knew, or with the exercise of reasonable care, should have known of the risk of criminal conduct and the owner’s failure to exercise reasonable care to deter such foreseeable conduct is found to be a proximate cause of the plaintiff’s damages.

**Hedonic Damages – Loss of Enjoyment of Life Damages Limited**

The Act prohibits the recovery of hedonic (loss of enjoyment of life) damages as a separate element of damages apart from pain and suffering damages, and prohibits recovery of such damages in wrongful death actions. This provision does not prohibit hedonic damages in personal injury cases outright, but it does prohibit an instruction to a jury that separates hedonic damages from pain and suffering. The two types of damages are therefore merged. The provision also prohibits expert testimony as to the specific monetary value of pain and suffering and loss of enjoyment of life, which the jury decides.

**Out of State Lawyer Advertising Limited**

For a lawyer to advertise his services in Mississippi, he or she must be a member of the Mississippi Bar or associated with a member of the Mississippi Bar and actively working on substantial aspects of the case solicited by advertisement in the state.

**Fines for Filing Frivolous Lawsuits**

The Act empowers a judge to impose a fine of \$1,000.00 against each party and attorney of record for the filing of a frivolous claim. Fines are paid over to the Mississippi Volunteer Lawyers Project, Inc.

**Appeal Penalty Repealed**

The Act repeals the current 15% penalty imposed upon a party who unsuccessfully appeals a decision to the Mississippi Supreme Court. The current requirement that a defendant post a bond equal to 125% of the amount of the lower court judgment in order to appeal is still in place.

**Other Important Issues**

Mississippi Supreme Court Chief Justice Edwin L. Pittman has announced the creation of a task force formed to study new ways to select judges for the Mississippi Supreme Court and Court of Appeals. The Legislature would have to pass a constitutional amendment to affect such a change. In a letter to the individuals that he asked to participate in the task force, Pittman said, “The political election of appellate judges has a strong tendency to destroy the impartiality of judges. Elections where hundreds of thousands of dollars are collected by candidates and where organized special interest groups spend hundreds of thousands of dollars promoting their interests strongly counteract the public’s interest.”

This Client Alert Bulletin is not intended to cover the entire Act and provides general information only. It does not constitute legal advice applicable to any particular situation. If you have any questions concerning the Act, please contact one of the following YoungWilliams attorneys:

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