

By: Representative Formby

To: Judiciary A

HOUSE BILL NO. 89

1 AN ACT TO LIMIT PUNITIVE DAMAGE AWARDS IN FINANCIAL INJURY
2 ACTIONS; TO PROVIDE EXCEPTIONS TO SUCH LIMITATIONS; TO AMEND
3 SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
4 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

6 SECTION 1. As used in this act, the term "financial injury
7 action" refers to any civil action in which:

8 (a) There is no claim for compensation made on account
9 of personal injury;

10 (b) There is no claim for compensation on account of
11 personal injury which is submitted to the trier of fact; or

12 (c) The trier of fact determines that there is no
13 liability for compensation on account of any personal injury.

14 SECTION 2. In any financial injury action:

15 (a) No award of punitive damages shall exceed the
16 greater of two (2) time the amount of total compensatory damages
17 awarded to the plaintiff in the action or Two Hundred Fifty
18 Thousand Dollars (\$250,000.00).

19 (b) Evidence of a defendant's financial condition or
20 net worth shall not be admissible in the portion of the proceeding
21 relating to the award of punitive damages.

22 (c) If the trier of fact determines that punitive
23 damages are to be awarded, the judge shall determine the amount of
24 the punitive damages award.

25 (d) Except as otherwise provided in paragraph (e) of
26 this section, punitive damages shall not be awarded against a
27 defendant for any activity which is subject to regulation by any

28 agency of the United States or the State of Mississippi, if the
29 regulated activity was in compliance with applicable regulations
30 of the United States and this state.

31 (e) The prohibition against awarding punitive damages
32 in the circumstances described in paragraph (d) of this section
33 shall not apply when the plaintiff proves by clear and convincing
34 evidence that the defendant:

35 (i) Knowingly and in violation of applicable state
36 or federal agency regulations withheld or misrepresented
37 information required to be submitted to the agency, which
38 information was material and relevant to the harm in question; or

39 (ii) Made an illegal payment to an official of the
40 federal or state agency for the purpose of securing approval of
41 the activity.

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

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

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

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

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

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

63 (e) In all cases involving an award of punitive
64 damages, the fact finder, in determining the amount of punitive

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

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

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

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

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

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

97 4. In mitigation, the imposition of criminal

98 sanctions on the defendant for its conduct and the existence of
99 other civil awards against the defendant for the same conduct.

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

112 (2) The provisions of Section 11-1-65 shall not apply to:

113 (a) Contracts;

114 (b) Libel and slander; or

115 (c) Causes of action for persons and property arising
116 out of asbestos.

117 (3) Punitive damages for a financial injury action shall be
118 governed by Sections 1 and 2 of House Bill No. _____, 1999
119 Regular Session.

120 SECTION 4. This act shall take effect and be in force from
121 and after July 1, 1999.