

By: Representatives Chaney, Saucier

To: Judiciary A

## HOUSE BILL NO. 703

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO  
2 LIMIT PUNITIVE DAMAGES AWARDS AND TO CREATE EXCEPTIONS TO THOSE  
3 LIMITATIONS; TO LIMIT RECOVERY OF NONECONOMIC DAMAGES; TO DEFINE  
4 "ECONOMIC" AND "NONECONOMIC" DAMAGES; TO AMEND SECTION 11-7-13,  
5 MISSISSIPPI CODE OF 1972, TO LIMIT RECOVERY OF NONECONOMIC AND  
6 PUNITIVE DAMAGES IN A WRONGFUL DEATH ACTION; AND FOR RELATED  
7 PURPOSES.

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

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

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

13 (a) Punitive damages may not be awarded if the claimant  
14 does not prove beyond a reasonable doubt that the defendant  
15 against whom punitive damages are sought acted with actual malice,  
16 gross negligence which evidences a willful, wanton or reckless  
17 disregard for the safety of others, or committed actual fraud.

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

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

26 (d) The court shall determine whether the issue of  
27 punitive damages may be submitted to the trier of fact; and, if  
28 so, the trier of fact shall determine whether to award punitive

29 damages and in what amount.

30 (e) In all cases involving an award of punitive  
31 damages, the fact finder, in determining the amount of punitive  
32 damages, shall consider, to the extent relevant, the following:  
33 the defendant's financial condition and net worth; the nature and  
34 reprehensibility of the defendant's wrongdoing at the time and  
35 under the circumstances when it was committed, for example, the  
36 impact of the defendant's conduct on the plaintiff, or the  
37 relationship of the defendant to the plaintiff; the defendant's  
38 awareness of the amount of harm being caused and the defendant's  
39 motivation in causing such harm; the duration of the defendant's  
40 misconduct and whether the defendant attempted to conceal such  
41 misconduct; whether the defendant's conduct is found to have  
42 caused harm to the plaintiff is at present continuing with respect  
43 to the plaintiff or other individuals; and any other circumstances  
44 shown by the evidence that bear on determining a proper amount of  
45 punitive damages. The trier of fact shall be instructed that the  
46 primary purpose of punitive damages is to punish the wrongdoer and  
47 deter similar misconduct in the future by the defendant and others  
48 while the purpose of compensatory damages is to make the plaintiff  
49 whole.

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

55 (ii) In determining whether the award is  
56 excessive, the court shall take into consideration the following  
57 factors:

58 1. Whether there is a reasonable relationship  
59 between the punitive damage award and the harm likely to result  
60 from the defendant's conduct as well as the harm that actually  
61 occurred;

62 2. The degree of reprehensibility of the  
63 defendant's conduct, the duration of that conduct, the defendant's  
64 awareness, any concealment, and the existence and frequency of  
65 similar past conduct;

66                   3. The financial condition and net worth of  
67 the defendant; and

68                   4. In mitigation, the imposition of criminal  
69 sanctions on the defendant for its conduct and the existence of  
70 other civil awards against the defendant for the same conduct.

71                   (g) The seller of a product other than the manufacturer  
72 shall not be liable for punitive damages unless the seller  
73 exercised substantial control over that aspect of the design,  
74 testing, manufacture, packaging or labeling of the product that  
75 caused the harm for which recovery of damages is sought; the  
76 seller altered or modified the product, and the alteration or  
77 modification was a substantial factor in causing the harm for  
78 which recovery of damages is sought; the seller had actual  
79 knowledge of the defective condition of the product at the time he  
80 supplied same; or the seller made an express factual  
81 representation about the aspect of the product which caused the  
82 harm for which recovery of damages is sought.

83                   (h) No award of punitive damages shall exceed the  
84 greater of five (5) times the amount of total economic damages  
85 awarded to the plaintiff in the action or Two Hundred Fifty  
86 Thousand Dollars (\$250,000.00). "Economic damages" means  
87 objectively verifiable pecuniary damages arising from medical  
88 expenses and medical care, rehabilitation services, custodial  
89 care, burial costs, loss of past, present or future earnings or  
90 earning capacity, loss of past, present or future income or  
91 profits, loss of use of property, costs of repair or replacement  
92 of property, costs of obtaining substitute domestic services, loss  
93 of employment, loss of business or employment opportunities, and  
94 other objectively verifiable monetary losses. Economic damages do  
95 not mean damages arising from pain, suffering, inconvenience,  
96 physical impairment, disfigurement, mental anguish, emotional  
97 distress, loss of society and companionship, loss of consortium,  
98 loss of enjoyment of life, injury to reputation, humiliation,

99 other nonpecuniary damages, and any other theory of damages which  
100 are not objectively verifiable; they also do not include any  
101 punitive damages.

102 (i) Except as may be otherwise provided in paragraph  
103 (j) of this subsection, only one (1) award for punitive damages  
104 may be made against a defendant for the same act, decision,  
105 omission or course of conduct. In any action for harm caused by  
106 any defect in a product, punitive damages may not be awarded  
107 against a defendant if such damages have been awarded in any prior  
108 action against that defendant for the same defect. For purposes  
109 of this section, identical defects in individual units of a  
110 manufacturer's products shall be deemed to be the same defect.

111 (j) The provision limiting awards for punitive damages  
112 as described in paragraph (i) shall not apply if the claimant  
113 proves beyond a reasonable doubt that new evidence concerning the  
114 defendant's conduct justifies an award of additional punitive  
115 damages. New evidence means evidence not available to the  
116 claimant in the first action in which punitive damages were  
117 awarded.

118 (k) Except as otherwise provided in paragraph (m) of  
119 this section, punitive damages shall not be awarded against a  
120 defendant for any activity which is subject to regulation by any  
121 agency of the United States or the State of Mississippi, if the  
122 regulated activity was in compliance with applicable regulations  
123 of the United States and this state.

124 (l) Except as otherwise provided in paragraph (m) of  
125 this section, punitive damages shall not be awarded against a  
126 manufacturer or product seller if the aspect of the product's  
127 manufacture, design, formulation, inspection, testing, packaging,  
128 labeling or warning which caused the claimant's harm complied  
129 with:

130 (i) Any federal statute in effect at the time the  
131 product was produced;

132                   (ii) Any administrative regulation in effect at  
133 the time the product was produced that was promulgated by an  
134 agency of the federal government which had responsibility to  
135 regulate the safety of the product or to establish safety  
136 standards for the product pursuant to a federal statute;

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

140                   (iv) Any state or local statute, ordinance, agency  
141 regulation or agency certification applicable to the place where  
142 the harm to the plaintiff allegedly occurred.

143                   (m) The prohibition against awarding punitive damages  
144 in the circumstances described in paragraph (k) or (l) of this  
145 subsection shall not apply when the plaintiff proves beyond a  
146 reasonable doubt that the defendant:

147                   (i) Knowingly and in violation of applicable state  
148 or federal agency regulations withheld or misrepresented  
149 information required to be submitted to the agency, which  
150 information was material and relevant to the harm in question; or

151                   (ii) Made an illegal payment to an official of the  
152 federal agency for the purpose of securing approval of the  
153 activity or product as described in paragraph (1)(iii) of this  
154 subsection.

155                   (2) In any action for either wrongful death pursuant to  
156 Section 11-7-13, or personal injury, the prevailing plaintiff may  
157 be awarded compensatory damages for economic damages incurred by  
158 the injured plaintiff, and noneconomic damages suffered by the  
159 injured plaintiff not to exceed Two Hundred Fifty Thousand Dollars  
160 (\$250,000.00).

161                   (a) "Economic damages" means objectively verifiable  
162 pecuniary damages arising from medical expenses and medical care,  
163 rehabilitation services, custodial care, burial costs, loss of  
164 past, present or future earnings or earning capacity, loss of

165 past, present or future income or profits, loss of use of  
166 property, costs of repair or replacement of property, costs of  
167 obtaining substitute domestic services, loss of employment, loss  
168 of business or employment opportunities, and other objectively  
169 verifiable monetary losses.

170 (b) "Noneconomic damages" means damages arising from  
171 pain, suffering, inconvenience, physical impairment,  
172 disfigurement, mental anguish, emotional distress, loss of society  
173 and companionship, loss of consortium, loss of enjoyment of life,  
174 injury to reputation, humiliation, other nonpecuniary damages, and  
175 any other theory of damages which are not objectively verifiable.  
176 It does not include any punitive damages.

177 (3) When an attorney is compensated on a contingent fee  
178 basis in any action for either personal injury or wrongful death,  
179 the contingent fees shall not exceed forty percent (40%) of the  
180 first Fifty Thousand Dollars (\$50,000.00) recovered; Thirty-three  
181 and one-third percent (33-1/3%) of the next Fifty Thousand Dollars  
182 (\$50,000.00) recovered; Twenty-five percent (25%) of the next Five  
183 Hundred Thousand Dollars (\$500,000.00) recovered; and Fifteen  
184 percent (15%) of any amount recovered in excess of Six Hundred  
185 Thousand Dollars (\$600,000.00). These limitations shall apply  
186 whether the recovery of damages is by settlement, arbitration,  
187 mediation or judgment, or whether the person for whom the recovery  
188 is made is an adult, a minor or a person of unsound mind. The  
189 amount recovered shall be computed by first deducting all  
190 disbursements for litigation expenses incurred in connection with  
191 the filing and prosecution of a personal injury action, and the  
192 final contingent fee shall be calculated on the aggregate sum of  
193 that amount, regardless of the number of personal injury  
194 claimants.

195 SECTION 2. Section 11-7-13, Mississippi Code of 1972, is  
196 amended as follows:

197 11-7-13. Whenever the death of any person shall be caused by

198 any real, wrongful or negligent act or omission, or by such unsafe  
199 machinery, way or appliances as would, if death had not ensued,  
200 have entitled the party injured or damaged thereby to maintain an  
201 action and recover damages in respect thereof, or whenever the  
202 death of any person shall be caused by the breach of any warranty,  
203 express or implied, of the purity or fitness of any foods, drugs,  
204 medicines, beverages, tobacco or any and all other articles or  
205 commodities intended for human consumption, as would, had the  
206 death not ensued, have entitled the person injured or made ill or  
207 damaged thereby, to maintain an action and recover damages in  
208 respect thereof, and such deceased person shall have left a widow  
209 or children or both, or husband or father or mother, or sister, or  
210 brother, the person or corporation, or both that would have been  
211 liable if death had not ensued, and the representatives of such  
212 person shall be liable for damages, notwithstanding the death, and  
213 the fact that death was instantaneous shall in no case affect the  
214 right of recovery. The action for such damages may be brought in  
215 the name of the personal representative of the deceased person for  
216 the benefit of all persons entitled under the law to recover, or  
217 by widow for the death of her husband, or by the husband for the  
218 death of the wife, or by the parent for the death of a child, or  
219 in the name of a child, or in the name of a child for the death of  
220 a parent, or by a brother for the death of a sister, or by a  
221 sister for the death of a brother, or by a sister for the death of  
222 a sister, or a brother for the death of a brother, or all parties  
223 interested may join in the suit, and there shall be but one (1)  
224 suit for the same death which shall ensue for the benefit of all  
225 parties concerned, but the determination of such suit shall not  
226 bar another action unless it be decided on its merits. In such  
227 action the party or parties suing shall recover such damages  
228 allowable by law as the jury may determine to be just, taking into  
229 consideration all the damages of every kind to the decedent and  
230 all damages of every kind to any and all parties interested in the

231 suit. In no event shall any noneconomic damages awarded under  
232 this section exceed Two Hundred Fifty Thousand Dollars  
233 (\$250,000.00). In no event shall any punitive damages awarded  
234 under this section exceed the greater of five (5) times the amount  
235 of the total of economic damages awarded to plaintiff or Two  
236 Hundred Fifty Thousand Dollars (\$250,000.00).

237 This section shall apply to all personal injuries of servants  
238 and employees received in the service or business of the master or  
239 employer, where such injuries result in death, and to all deaths  
240 caused by breach of warranty, either express or implied, of the  
241 purity and fitness of foods, drugs, medicines, beverages, tobacco  
242 or other articles or commodities intended for human consumption.

243 Any person entitled to bring a wrongful death action may  
244 assert or maintain a claim for any breach of expressed warranty or  
245 for any breach of implied warranty. A wrongful death action may  
246 be maintained or asserted for strict liability in tort or for any  
247 cause of action known to the law for which any person,  
248 corporation, legal representative or entity would be liable for  
249 damages if death had not ensued.

250 In an action brought pursuant to the provisions of this  
251 section by the widow, husband, child, father, mother, sister or  
252 brother of the deceased, or by all interested parties, such party  
253 or parties may recover as damages property damages and funeral,  
254 medical or other related expenses incurred by or for the deceased  
255 as a result of such wrongful or negligent act or omission or  
256 breach of warranty, whether an estate has been opened or not. Any  
257 amount, but only such an amount, as may be recovered for property  
258 damage, funeral, medical or other related expenses shall be  
259 subject only to the payment of the debts or liabilities of the  
260 deceased for property damages, funeral, medical or other related  
261 expenses. All other damages recovered under the provisions of  
262 this section shall not be subject to the payment of the debts or  
263 liabilities of the deceased, except as hereinafter provided, and



264 such damages shall be distributed as follows:

265 Damages for the injury and death of a married man shall be  
266 equally distributed to his wife and children, and if he has no  
267 children all shall go to his wife; damages for the injury and  
268 death of a married woman shall be equally distributed to the  
269 husband and children, and if she has no children all shall go to  
270 the husband; and if the deceased has no husband or wife, the  
271 damages shall be equally distributed to the children; if the  
272 deceased has no husband, nor wife, nor children, the damages shall  
273 be distributed equally to the father, mother, brothers and  
274 sisters, or such of them as the deceased may have living at his or  
275 her death. If the deceased have neither husband, nor wife, nor  
276 children, nor father, nor mother, nor sister, nor brother, then  
277 the damages shall go to the legal representative, subject to debts  
278 and general distribution, and the fact that the deceased was  
279 instantly killed shall not affect the right of the legal  
280 representative to recover. All references in this section to  
281 children shall include descendants of a deceased child, such  
282 descendants to take the share of the deceased child by  
283 representation. There shall not be, in any case, a distinction  
284 between the kindred of the whole and half blood of equal degree.  
285 The provisions of this section shall apply to illegitimate  
286 children on account of the death of the mother and to the mother  
287 on account of the death of an illegitimate child or children, and  
288 they shall have all the benefits, rights and remedies conferred by  
289 this section on legitimates. The provisions of this section shall  
290 apply to illegitimate children on account of the death of the  
291 natural father and to the natural father on account of the death  
292 of the illegitimate child or children, and they shall have all the  
293 benefits, rights and remedies conferred by this section on  
294 legitimates, if the survivor has or establishes the right to  
295 inherit from the deceased under Section 91-1-15.

296 Any rights which a blood parent or parents may have under

297 this section are hereby conferred upon and vested in an adopting  
298 parent or adopting parents surviving their deceased adopted child,  
299 just as if the child were theirs by the full blood and had been  
300 born to the adopting parents in lawful wedlock.

301 Notwithstanding any other statute or provision of law, all  
302 actions for injuries producing death shall be filed in the county  
303 in which the defendant or any of them may be found or in the  
304 county where the cause of action may occur or accrue and, if the  
305 defendant is a domestic corporation, in the county in which said  
306 corporation is domiciled or in the county where the cause of  
307 action may occur or accrue. For purposes of this section, an  
308 action for injuries producing death occurs or accrues in the  
309 county in which the defendant or defendants committed the real,  
310 wrongful or negligent act or omission, whether the resulting death  
311 occurred in that county or not.

312 SECTION 2. The provisions of this act are remedial in nature  
313 and shall be applied to all causes of action pending or filed on  
314 or after July 1, 1999, including matters on appeal.