

By: Formby

To: Judiciary A

HOUSE BILL NO. 631

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. \_\_\_\_\_, 2000  
119 Regular Session.

120 SECTION 4. This act shall take effect and be in force from  
121 and after July 1, 2000.