

By: Representative Guice

To: Judiciary A

HOUSE BILL NO. 1496

1 AN ACT TO AMEND SECTIONS 11-1-55 AND 11-1-65, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE THAT DAMAGES MAY NOT BE AWARDED IF THE  
3 RESULT WOULD BANKRUPT THE DEFENDANT; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 11-1-55, Mississippi Code of 1972, is  
6 amended as follows:

7 11-1-55. The Supreme Court or any other court of record in a  
8 case in which money damages were awarded may overrule a motion for  
9 new trial or affirm on direct or cross appeal, upon condition of  
10 an additur or remittitur, if the court finds that the damages are  
11 excessive or inadequate for the reason that the jury or trier of  
12 the facts was influenced by bias, prejudice, or passion, or that  
13 the damages awarded were contrary to the overwhelming weight of  
14 credible evidence or that the damages could bankrupt the  
15 defendant. If such additur or remittitur be not accepted then the  
16 court may direct a new trial on damages only. If the additur or  
17 remittitur is accepted and the other party perfects a direct  
18 appeal, then the party accepting the additur or remittitur shall  
19 have the right to cross appeal for the purpose of reversing the  
20 action of the court in regard to the additur or remittitur.

21 SECTION 2. Section 11-1-65, Mississippi Code of 1972, is  
22 amended as follows:

23 11-1-65. (1) In any action in which punitive damages are  
24 sought:

25 (a) Punitive damages may not be awarded if the claimant  
26 does not prove by clear and convincing evidence that the defendant  
27 against whom punitive damages are sought acted with actual malice,

28 gross negligence which evidences a willful, wanton or reckless  
29 disregard for the safety of others, or committed actual fraud.

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

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

38 (d) The court shall determine whether the issue of  
39 punitive damages may be submitted to the trier of fact; and, if  
40 so, the trier of fact shall determine whether to award punitive  
41 damages and in what amount.

42 (e) In all cases involving an award of punitive  
43 damages, the fact finder, in determining the amount of punitive  
44 damages, shall consider, to the extent relevant, the following:  
45 the defendant's financial condition and net worth; the nature and  
46 reprehensibility of the defendant's wrongdoing, for example, the  
47 impact of the defendant's conduct on the plaintiff, or the  
48 relationship of the defendant to the plaintiff; the defendant's  
49 awareness of the amount of harm being caused and the defendant's  
50 motivation in causing such harm; the duration of the defendant's  
51 misconduct and whether the defendant attempted to conceal such  
52 misconduct; and any other circumstances shown by the evidence that  
53 bear on determining a proper amount of punitive damages. The  
54 trier of fact shall be instructed that the primary purpose of  
55 punitive damages is to punish the wrongdoer and deter similar  
56 misconduct in the future by the defendant and others while the  
57 purpose of compensatory damages is to make the plaintiff whole.

58 (f) (i) Before entering judgment for an award of  
59 punitive damages the trial court shall ascertain that the award is  
60 reasonable in its amount and rationally related to the purpose to

61 punish what occurred giving rise to the award and to deter its  
62 repetition by the defendant and others.

63 (ii) In determining whether the award is  
64 excessive, the court shall take into consideration the following  
65 factors:

66 1. Whether there is a reasonable relationship  
67 between the punitive damage award and the harm likely to result  
68 from the defendant's conduct as well as the harm that actually  
69 occurred;

70 2. The degree of reprehensibility of the  
71 defendant's conduct, the duration of that conduct, the defendant's  
72 awareness, any concealment, and the existence and frequency of  
73 similar past conduct;

74 3. The financial condition and net worth of  
75 the defendant; and

76 4. In mitigation, the imposition of criminal  
77 sanctions on the defendant for its conduct and the existence of  
78 other civil awards against the defendant for the same conduct.

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

91 (h) Punitive damages may not be awarded if the result  
92 would bankrupt the defendant.

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

94                   (a) Contracts;  
95                   (b) Libel and slander; or  
96                   (c) Causes of action for persons and property arising  
97 out of asbestos.  
98           SECTION 3. This act shall take effect and be in force from  
99 and after July 1, 2001.