

By: Representative Howell

To: Judiciary A

HOUSE BILL NO. 857

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO  
2 AUTHORIZE THE COURT TO USE A PORTION OF AN AWARD OF PUNITIVE  
3 DAMAGES TO DEFRAY COURT COSTS; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 11-1-65, Mississippi Code of 1972, is  
6 amended as follows:

7 11-1-65. (1) In any action in which punitive damages are  
8 sought:

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

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

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

22 (d) The court shall determine whether the issue of  
23 punitive damages may be submitted to the trier of fact; and, if  
24 so, the trier of fact shall determine whether to award punitive  
25 damages and in what amount.

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



28 damages, shall consider, to the extent relevant, the following:  
29 the defendant's financial condition and net worth; the nature and  
30 reprehensibility of the defendant's wrongdoing, for example, the  
31 impact of the defendant's conduct on the plaintiff, or the  
32 relationship of the defendant to the plaintiff; the defendant's  
33 awareness of the amount of harm being caused and the defendant's  
34 motivation in causing such harm; the duration of the defendant's  
35 misconduct and whether the defendant attempted to conceal such  
36 misconduct; and any other circumstances shown by the evidence that  
37 bear on determining a proper amount of punitive damages. The  
38 trier of fact shall be instructed that the primary purpose of  
39 punitive damages is to punish the wrongdoer and deter similar  
40 misconduct in the future by the defendant and others while the  
41 purpose of compensatory damages is to make the plaintiff whole.

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

47 (ii) In determining whether the award is  
48 excessive, the court shall take into consideration the following  
49 factors:

50 1. Whether there is a reasonable relationship  
51 between the punitive damage award and the harm likely to result  
52 from the defendant's conduct as well as the harm that actually  
53 occurred;

54 2. The degree of reprehensibility of the  
55 defendant's conduct, the duration of that conduct, the defendant's  
56 awareness, any concealment, and the existence and frequency of  
57 similar past conduct;

58 3. The financial condition and net worth of  
59 the defendant; and



60                   4. In mitigation, the imposition of criminal  
61 sanctions on the defendant for its conduct and the existence of  
62 other civil awards against the defendant for the same conduct.

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

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

76                   (a) Contracts;

77                   (b) Libel and slander; or

78                   (c) Causes of action for persons and property arising  
79 out of asbestos.

80                   (3) The court is authorized to use a portion of an award of  
81 punitive damages to defray the costs of the court incurred in the  
82 course of the trial.

83                   **SECTION 2.** This act shall take effect and be in force from  
84 and after July 1, 2002.

