

By: Representative Martinson

To: Judiciary A

HOUSE BILL NO. 967

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT PUNITIVE DAMAGES ARE PAYABLE TO THE STATE; TO DEPOSIT
3 PUNITIVE DAMAGES INTO THE CRIME VICTIMS' COMPENSATION FUND, THE
4 CAPITAL DEFENSE COUNSEL SPECIAL FUND AND THE RAINY DAY FUND; AND
5 FOR RELATED PURPOSES.

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

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

9 11-1-65. (1) In any action in which punitive damages are
10 sought:

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

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

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

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



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

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

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

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

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



60 3. The financial condition and net worth of
61 the defendant; and

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

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

77 (h) An award for punitive damages is payable to the
78 state and not to the individual plaintiff or plaintiffs who bring
79 the suit. The damage award will be evenly divided between the
80 Crime Victims' Compensation Fund and the Capital Defense Counsel
81 Special Fund. The Legislature will determine an amount that will
82 be considered full funding for these funds. Once the amount
83 deposited into a fund reaches the predetermined cap for that
84 respective fiscal year, any punitive damage awards will be
85 deposited into the state's Rainy Day Fund. Monies deposited into
86 any of these funds are subject to the restrictions on usage that
87 are contained in applicable law for the particular fund.

88 (i) In an action in which punitive damages are awarded,
89 attorney's fees may be collected from the punitive damage award.
90 The prevailing attorney may petition the trial court to determine
91 a reasonable amount of attorney's fees and to award that amount to
92 the attorneys.



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

