

By: Representative Blackmon

To: Judiciary A

HOUSE BILL NO. 1499

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE JUDGE SHALL DETERMINE THE ECONOMIC NET WORTH OF A
3 DEFENDANT IN PUNITIVE DAMAGES AWARDS; 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 judge, in determining the amount of punitive damages,



28 shall consider, to the extent relevant, the following: the
29 defendant's financial condition and either accounting or economic
30 net worth. In determining financial condition, the judge shall
31 consider the company's financial statements prepared in accordance
32 with generally acceptable accounting principles, including the
33 associated notes to the financial statements; the status of the
34 company's assets, liabilities, revenue, expenses, and equity
35 positions; and the relationships between various financial
36 statement items. In determining accounting net worth, the judge
37 shall consider the company's financial statements prepared in
38 accordance with generally acceptable accounting principles,
39 including the associated notes to the financial statements. In
40 determining economic net worth, the judge shall consider the
41 company's financial statements prepared in accordance with
42 generally acceptable accounting principles, including the
43 associated notes to the financial statements; along with an
44 acceptable valuation method that is reasonably relied upon by
45 experts in the field. The judge, in determining the amount of
46 punitive damages, shall consider the following: the nature and
47 reprehensibility of the defendant's wrongdoing, for example, the
48 impact of the defendant's conduct on the plaintiff, or the
49 relationship of the defendant to the plaintiff; the defendant's
50 awareness of the amount of harm being caused and the defendant's
51 motivation in causing such harm; the duration of the defendant's
52 misconduct and whether the defendant attempted to conceal such
53 misconduct; and any other circumstances shown by the evidence that
54 bear on determining a proper amount of punitive damages. The
55 trier of fact shall be instructed that the primary purpose of
56 punitive damages is to punish the wrongdoer and deter similar
57 misconduct in the future by the defendant and others while the
58 purpose of compensatory damages is to make the plaintiff whole.

59 (f) (i) Before entering judgment for an award of
60 punitive damages the trial court shall ascertain that the award is



61 reasonable in its amount and rationally related to the purpose to
62 punish what occurred giving rise to the award and to deter its
63 repetition by the defendant and others.

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

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

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

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

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

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

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

93 (a) Contracts;



94 (b) Libel and slander; or

95 (c) Causes of action for persons and property arising
96 out of asbestos.

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

