

By: Senator(s) King, Chaney, Michel, Kirby

To: Judiciary

SENATE BILL NO. 2751

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO  
2 ENACT LIMITATIONS ON PUNITIVE DAMAGE AWARDS; TO AMEND SECTION  
3 11-55-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE LOSER PAYS  
4 IN A LAWSUIT; TO CREATE A NEW CODE SECTION TO BE CODIFIED AS  
5 SECTION 11-1-67, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN  
6 COLLATERAL BENEFITS MUST BE CONSIDERED BY THE COURT AND USED TO  
7 REDUCE AN AWARD OF ACTUAL DAMAGES; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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



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

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

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

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

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



62                               3. The financial condition and net worth of  
63 the defendant; and

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

67                               (g) Punitive damages shall not exceed the greater of  
68 five (5) times the amount of the total compensatory damages  
69 awarded to the plaintiff or One Million Dollars (\$1,000,000.00),  
70 whichever is greater; provided, however, if the defendant is a  
71 business with fewer than twenty-five (25) full-time employees or a  
72 net worth of less than Two Million Dollars (\$2,000,000.00), no  
73 award of punitive damages shall exceed Ten Percent (10%) of the  
74 business' net worth or One Hundred Thousand Dollars (\$100,000.00),  
75 whichever is greater. This restriction shall not be disclosed to  
76 the trier of fact but shall be applied by the court to any  
77 punitive damages awarded.

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

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

91                               (a) Contracts;

92                               (b) Libel and slander; or

93                               (c) Causes of action for persons and property arising  
94 out of asbestos.



95           **SECTION 2.** Section 11-55-5, Mississippi Code of 1972, is  
96 amended as follows:

97           11-55-5. (1) Except as otherwise provided in this chapter,  
98 in any civil action commenced or appealed in any court of record  
99 in this state, the court shall award to the prevailing party, as  
100 part of its judgment and in addition to any other costs otherwise  
101 assessed, \* \* \* attorney's fees on a money judgment as follows:

102           (a) On the first Twenty-five Thousand Dollars  
103 (\$25,000.00) or portion thereof:

104                   (i) If contested with trial, twenty percent (20%);

105                   (ii) If contested without trial, eighteen percent  
106 (18%);

107                   (iii) If noncontested, ten percent (10%).

108           (b) On the next Seventy-five Thousand Dollars  
109 (\$75,000.00) or portion thereof:

110                   (i) If contested with trial, ten percent (10%);

111                   (ii) If contested without trial, eight percent  
112 (8%);

113                   (iii) If noncontested, three percent (3%).

114           (c) On the next Four Hundred Thousand Dollars  
115 (\$400,000.00) or portion thereof:

116                   (i) If contested with trial, ten percent (10%);

117                   (ii) If contested without trial, six percent (6%);

118                   (iii) If noncontested, two percent (2%).

119           (d) On any portion of the award in excess of Five  
120 Hundred Thousand Dollars (\$500,000.00):

121                   (i) If contested with trial, ten percent (10%);

122                   (ii) If contested without trial, two percent (2%);

123                   (iii) If noncontested, one percent (1%).

124           (2) In cases in which the prevailing party recovers no money  
125 judgment, the court shall award the prevailing party the  
126 prevailing party's reasonable attorney's fees which were  
127 necessarily incurred, including fees for legal work customarily



128 performed by an attorney but which was delegated to and performed  
129 by an investigator, paralegal or law clerk.

130 (3) The court shall also award its other costs to the  
131 prevailing party \* \* \*.

132 (4) No attorney's fees or costs shall be assessed if a  
133 voluntary dismissal is filed as to any action, claim or defense  
134 within a reasonable time after the attorney or party filing the  
135 action, claim or defense knows or reasonably should have known  
136 that it would not prevail on the action, claim or defense. No  
137 attorney's fees shall be allowed to the plaintiff if the court  
138 finds that the defendant offered to the plaintiff, prior to the  
139 commencement of the action, an amount at least equal to Ninety  
140 Percent (90%) of the amount awarded to the plaintiff.

141 (5) \* \* \* A court \* \* \* shall assess the attorney's fees and  
142 costs against the \* \* \* attorneys or parties, or both, and in its  
143 discretion may allocate the payment among them, as it determines  
144 most just, and may assess the full amount or any portion to  
145 any \* \* \* attorney or party liable therefor.

146 (6) No party, except an attorney licensed to practice law in  
147 this state, who is appearing without an attorney shall be assessed  
148 attorney's fees unless the court finds that the party clearly knew  
149 or reasonably should have known that such party's action, claim or  
150 defense or any part of it was without substantial justification.

151 **SECTION 3.** The following shall be codified as Section 11-1-  
152 67, Mississippi Code of 1972:

153 **11-1-67. Actions for personal injury, injury to property or**  
154 **wrongful death.**

155 In any action brought to recover damages for personal injury,  
156 injury to property or wrongful death, where the plaintiff seeks to  
157 recover for the cost of medical care, dental care, custodial care,  
158 rehabilitation services, loss of earnings or other economic loss,  
159 evidence shall be admissible for consideration by the court to  
160 establish that any such past or future cost or expense was or



161 will, with reasonable certainty, be replaced or indemnified, in  
162 whole or in part, from any collateral source such as insurance,  
163 other than life insurance, social security, other than those  
164 benefits provided under title XVIII of the Social Security Act,  
165 workers' compensation or employee benefit programs; the court  
166 shall not consider collateral sources entitled by law or some  
167 right of subrogation to liens against any recovery of the  
168 plaintiff. If the court finds that any cost or expense was or  
169 will, with reasonable certainty, be replaced or indemnified from  
170 any allowable collateral source, it shall reduce the amount of the  
171 award by such finding, minus an amount equal to the premiums paid  
172 by the plaintiff for such benefits for the two-year period  
173 immediately preceding the accrual of the action and minus an  
174 amount equal to the projected future cost to the plaintiff of  
175 maintaining such benefits. In order to find that any future cost  
176 or expense will, with reasonable certainty, be replaced or  
177 indemnified by the collateral source, the court must find that the  
178 plaintiff is legally entitled to the continued receipt of such  
179 collateral source, pursuant to a contract or otherwise enforceable  
180 agreement, subject only to the continued payment of a premium and  
181 such other financial obligations as may be required by the  
182 agreement.

183       **SECTION 4.** This act shall take effect and be in force from  
184 and after July 1, 2002.

