

By: Senator(s) White (29th)

To: Judiciary

SENATE BILL NO. 2801

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO
2 REVISE DISTRIBUTION OF AN AWARD FOR PUNITIVE DAMAGES; AND FOR
3 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) An award for punitive damages is payable to the
64 state and not to the individual plaintiff or plaintiffs who bring
65 the suit. The damage award will be evenly divided between the
66 Crime Victims' Compensation Fund established in Section 99-41-29,
67 and the Capital Defense Counsel Special Fund established in
68 Sections 99-18-17 and 99-18-19. The Legislature will determine an
69 amount that will be considered full funding for these funds. Once
70 the amount deposited into a fund reaches the pre-determined cap
71 for that respective fiscal year, any punitive damage awards will
72 be deposited into the state's Rainy Day Fund. Monies deposited
73 into any of these funds are subject to the restrictions on usage
74 contained in applicable law.

75 (h) In an action in which punitive damages are awarded,
76 attorney's fees may be collected from the punitive damage award.
77 The prevailing attorney may petition the trial court to determine
78 a reasonable amount of attorney's fees and to award that amount to
79 the attorney or attorneys.

80 (2) 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 (3) 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.

