

By: Representative Blackmon

To: Select Committee on  
Civil Justice Reform

HOUSE BILL NO. 13  
(As Passed the House)

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO  
2 IMPOSE A LIMITATION ON PUNITIVE DAMAGES AGAINST A SMALL BUSINESS;  
3 TO PROVIDE THAT SUCH LIMITATION SHALL NOT APPLY IN CERTAIN CASES;  
4 AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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



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

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

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

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

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

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





94       (4) Nothing herein shall be construed as creating a right to  
95 an award of punitive damages or to limit the duty of the court, or  
96 the appellate courts, to scrutinize all punitive damage awards,  
97 ensure that all punitive damage awards comply with applicable  
98 procedural, evidentiary and constitutional requirements, and to  
99 order additur or remittitur where appropriate.

100       (5) Subsections (1) and (2) of Section 11-1-65 shall not  
101 apply to:

102               (a) Contracts;

103               (b) Libel and slander; or

104               (c) Causes of action for persons and property arising  
105 out of asbestos.

106       **SECTION 2.** This act shall take effect and be in force from  
107 and after January 1, 2003, and shall apply only to causes of  
108 action occurring on or after that date.

