By: Representative Blackmon

To: Select Committee on Civil Justice Reform

## HOUSE BILL NO. (As Passed the House)

AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO 1 IMPOSE A LIMITATION ON PUNITIVE DAMAGES AGAINST A SMALL BUSINESS; 2

TO PROVIDE THAT SUCH LIMITATION SHALL NOT APPLY IN CERTAIN CASES; AND FOR RELATED PURPOSES. 3

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- 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
- 9 sought:
- (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
- 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
- The court shall determine whether the issue of 23 (d)
- 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
- 26 damages and in what amount.
- In all cases involving an award of punitive 27 (e)
- damages, the fact finder, in determining the amount of punitive 28

- 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.
- (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:
- 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

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 The seller of a product other than the manufacturer 64 65 shall not be liable for punitive damages unless the seller exercised substantial control over that aspect of the design, 66 testing, manufacture, packaging or labeling of the product that 67 caused the harm for which recovery of damages is sought; the 68 seller altered or modified the product, and the alteration or 69 modification was a substantial factor in causing the harm for 70 71 which recovery of damages is sought; the seller had actual knowledge of the defective condition of the product at the time he 72 73 supplied same; or the seller made an express factual representation about the aspect of the product which caused the 74 harm for which recovery of damages is sought. 75 (3) In a civil action against a business where an 76 entitlement to punitive damages shall have been established under 77 78 applicable laws, no award of punitive damages shall exceed ten percent (10%) of the net worth of the business, unless the finder 79 80 of fact and court find by clear and convincing evidence that the defendant acted with criminal intent to cause serious physical 81 82 bodily injury. This restriction shall not be disclosed to the trier of fact, but shall be applied by the court to any punitive 83 damages verdict. The limitations in damages to civil actions 84 seeking punitive damages as provided for in this subsection shall 85 not apply to civil actions seeking punitive damages for breach of 86 87 fiduciary duty or for action against businesses while engaged in core business activities of money management, providing legal or 88 accounting services, stock or bond brokerage, management of 89 retirement accounts or for those engaged in conduct constituting a 90 crime or for those engaged in conduct which constitutes abuse, 91 92 exploitation or willful neglect of a vulnerable adult, as those terms are defined in the Mississippi Vulnerable Adult Act. 93 H. B. No. 13

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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

action occurring on or after that date.

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