

*****Pending*****

AMENDMENT No. 15 TO AMENDMENT No. 1 PROPOSED TO

House Bill NO. 2

By Senator(s) Robertson, Ross

1 **AMEND** by inserting the following section after line ____ and
2 **renumbering subsequent section(s) accordingly:**

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

5 11-1-65. (1) In any action in which punitive damages are
6 sought:

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

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

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

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

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

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

45 (ii) In determining whether the award is
46 excessive, the court shall take into consideration the following
47 factors:

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

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

56 3. The financial condition and net worth of
57 the defendant; and

58 4. In mitigation, the imposition of criminal

59 sanctions on the defendant for its conduct and the existence of
60 other civil awards against the defendant for the same conduct.

61 (g) In all civil actions where an entitlement to
62 punitive damages shall have been established under applicable
63 laws, no award of punitive damages shall exceed the greater of
64 three (3) times the amount of the total compensatory damages
65 awarded to the plaintiff in an action or Three Million Dollars
66 (\$3,000,000.00); however, if the defendant is an individual or a
67 business with less than fifty (50) full-time employees, an award
68 of punitive damages shall not exceed two (2) times the amount of
69 the plaintiff's compensatory damages or Two Million Dollars
70 (\$2,000,000.00) or three percent (3%) of such defendant's net
71 worth, whichever is less, unless the finder of fact and court find
72 by clear and convincing evidence that the defendant acted with
73 criminal intent to cause serious physical bodily injury. This
74 restriction shall not be disclosed to the trier of fact, but shall
75 be applied by the court to any punitive damages verdict.

76 (h) Nothing herein shall be construed as creating a
77 right to an award of punitive damages or to limit the duty of the
78 court, or the appellate courts, to scrutinize all punitive damage
79 awards, ensure that all punitive damage awards comply with
80 applicable procedural, evidentiary and constitutional
81 requirements, and to order remittitur where appropriate.

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

94 (3) The provisions of Section 11-1-65 shall not apply to:
95 (a) Contracts;
96 (b) Libel and slander; or
97 (c) Causes of action for persons and property arising
98 out of asbestos.
99 **FURTHER, AMEND the title to conform.**