

By: Representative Bondurant

To: Judiciary A;  
Appropriations

HOUSE BILL NO. 766

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT SEVENTY-FIVE PERCENT OF ANY PUNITIVE DAMAGES AWARD  
3 SHALL BE DEPOSITED INTO THE STATE GENERAL FUND; AND FOR RELATED  
4 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 to determine whether punitive damages may  
22 be considered by the same trier of fact.

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

61                   4. In mitigation, the imposition of criminal  
62 sanctions on the defendant for its conduct and the existence of  
63 other civil awards against the defendant for the same conduct.

64           (2) The seller of a product other than the manufacturer  
65 shall not be liable for punitive damages unless the seller  
66 exercised substantial control over that aspect of the design,  
67 testing, manufacture, packaging or labeling of the product that  
68 caused the harm for which recovery of damages is sought; the  
69 seller altered or modified the product, and the alteration or  
70 modification was a substantial factor in causing the harm for  
71 which recovery of damages is sought; the seller had actual  
72 knowledge of the defective condition of the product at the time he  
73 supplied same.

74           (3) (a) In any civil action where an entitlement to  
75 punitive damages shall have been established under applicable  
76 laws, no award of punitive damages shall exceed the following:

77                   (i) Twenty Million Dollars (\$20,000,000.00) for a  
78 defendant with a net worth of more than One Billion Dollars  
79 (\$1,000,000,000.00);

80                   (ii) Fifteen Million Dollars (\$15,000,000.00) for  
81 a defendant with a net worth of more than Seven Hundred Fifty  
82 Million Dollars (\$750,000,000.00) but not more than One Billion  
83 Dollars (\$1,000,000,000.00);

84                   (iii) Five Million Dollars (\$5,000,000.00) for a  
85 defendant with a net worth of more than Five Hundred Million  
86 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty  
87 Million Dollars (\$750,000,000.00);

88                   (iv) Three Million Seven Hundred Fifty Thousand  
89 Dollars (\$3,750,000.00) for a defendant with a net worth of more  
90 than One Hundred Million Dollars (\$100,000,000.00) but not more  
91 than Five Hundred Million Dollars (\$500,000,000.00);

92                   (v) Two Million Five Hundred Thousand Dollars  
93 (\$2,500,000.00) for a defendant with a net worth of more than

94 Fifty Million Dollars (\$50,000,000.00) but not more than One  
95 Hundred Million Dollars (\$100,000,000.00); or

96 (vi) Two percent (2%) of the defendant's net worth  
97 for a defendant with a net worth of Fifty Million Dollars  
98 (\$50,000,000.00) or less.

99 (b) For the purposes of determining the defendant's net  
100 worth in paragraph (a), the amount of the net worth shall be  
101 determined in accordance with Generally Accepted Accounting  
102 Principles.

103 (c) The limitation on the amount of punitive damages  
104 imposed by this subsection (3) shall not be disclosed to the trier  
105 of fact, but shall be applied by the court to any punitive damages  
106 verdict.

107 (d) The limitation on the amount of punitive damages  
108 imposed by this subsection (3) shall not apply to actions brought  
109 for damages or an injury resulting from an act or failure to act  
110 by the defendant:

111 (i) If the defendant was convicted of a felony  
112 under the laws of this state or under federal law which caused the  
113 damages or injury; or

114 (ii) While the defendant was under the influence  
115 of alcohol or under the influence of drugs other than lawfully  
116 prescribed drugs administered in accordance with a prescription.

117 (4) Nothing in this section shall be construed as creating a  
118 right to an award of punitive damages or to limit the duty of the  
119 court, or the appellate courts, to scrutinize all punitive damage  
120 awards, ensure that all punitive damage awards comply with  
121 applicable procedural, evidentiary and constitutional  
122 requirements, and to order remittitur where appropriate.

123 (5) Seventy-five percent (75%) of any punitive damages award  
124 shall be deposited into the State General Fund.

125 **SECTION 2.** This act shall take effect and be in force from  
126 and after its passage.