

By: Representatives Smith (39th), Moore (60th), Cameron, Eakes, Rotenberry, Jennings, Chism, Nicholson, Lott, Davis, Formby, Robinson (84th), Robertson, Guice, Wells-Smith

To: Judiciary A

HOUSE BILL NO. 1492

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE AWARD IN A CIVIL ACTION OF 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) For the purposes of this section, the
8 following words and phrases shall have the meanings ascribed
9 herein unless the context clearly requires otherwise:

10 (a) "Clear and convincing evidence" is evidence that
11 leaves no serious or substantial doubt about the correctness of
12 the conclusions drawn from the evidence. It is more than a
13 preponderance of evidence, but is less than evidence beyond a
14 reasonable doubt.

15 (b) "Compensatory damages" are damages intended to make
16 an injured party whole and no more. Compensatory damages include
17 general and special damages, but do not include nominal damages.

18 (c) "Malice" is either conduct that is specifically
19 intended to cause tangible or intangible serious injury to a
20 plaintiff or conduct that is carried out by the defendant with a
21 flagrant indifference to the rights of the plaintiff and with a
22 subjective awareness that such conduct will result in tangible
23 serious injury.

24 (d) "Nominal damages" are damages that are not designed
25 to compensate a plaintiff and are less than Five Hundred Dollars
26 (\$500.00).



27 (e) "Punitive damages" are exemplary or vindicating
28 damages that are awarded against a party in a civil action to
29 penalize that party and to deter others from similar conduct in
30 the future. Punitive damages do not include compensatory damages
31 or nominal damages.

32 (2) The following general provisions apply to any award of
33 punitive damages in the State of Mississippi:

34 (a) An award of punitive damages must be specifically
35 requested in the complaint.

36 (b) Punitive damages may not be awarded if the claimant
37 does not prove by clear and convincing evidence that the defendant
38 against whom punitive damages are sought acted with actual malice
39 or gross negligence that evidences a willful, wanton or reckless
40 disregard for the safety of others, or committed actual fraud.

41 (c) In any action in which the claimant seeks an award
42 of punitive damages, the trier of fact shall first determine
43 whether compensatory damages are to be awarded and in what amount,
44 before addressing any issues related to punitive damages.

45 (d) If, but only if, an award of compensatory damages
46 has been made against a party, and the court finds that there is
47 sufficient evidence to proceed, then the court may promptly
48 commence an evidentiary hearing before the same trier of fact to
49 determine whether punitive damages may be considered.

50 (e) After hearing any additional evidence that may
51 support an award of punitive damages, the court shall then again
52 determine whether the issue of punitive damages may be submitted
53 to the trier of fact; and, if so, the trier of fact shall
54 determine whether to award punitive damages and in what amount.

55 (f) In all cases involving an award of punitive
56 damages, no evidence of or relating to the financial condition or
57 size of the defendant shall be admissible before the trier of fact
58 unless and until the defendant elects to offer evidence on these
59 issues in mitigation of the size of any punitive damages award.



60 (g) In all cases involving an award of punitive
61 damages, the fact finder, in determining the amount of punitive
62 damages, may consider, to the extent relevant, the following:

63 (i) * * * The nature and reprehensibility of the
64 defendant's wrongdoing at the time and under the circumstances
65 when it was committed, for example, the impact of the defendant's
66 conduct on the plaintiff, or the relationship of the defendant to
67 the plaintiff; the defendant's awareness of the amount of harm
68 being caused and the defendant's motivation in causing such harm;
69 the duration of the defendant's misconduct and whether the
70 defendant attempted to conceal such misconduct;

71 (ii) Whether the defendant's conduct was found to
72 have caused harm to the plaintiff is at present continuing with
73 respect to the plaintiff or other individuals;

74 (iii) The severity of the harm caused by the
75 defendant;

76 (iv) The extent to which the plaintiff's own
77 conduct contributed to the harm;

78 (v) The profitability of the conduct to the
79 defendant;

80 (vi) Prior awards of compensatory and punitive
81 damages to persons similarly situated to the plaintiff; and

82 (vii) * * * Any other circumstances shown by the
83 evidence that bear on determining a proper amount of punitive
84 damages.

85 (h) The trier of fact shall be instructed that the sole
86 purpose of punitive damages is to punish the wrongdoer and to
87 deter possible similar misconduct in the future by the defendant
88 and no amount should be awarded to compensate the plaintiff * * *.

89 (i) If a verdict is rendered awarding punitive damages,
90 the trial court shall ascertain whether the award is reasonable in
91 its amount and rationally related to any harm actually caused, and
92 the purpose to punish what occurred giving rise to the award and



93 to deter its repetition by the defendant and others, and then
94 enter judgment, reduce the award, or set the award aside, as
95 appropriate.

96 (j) In determining whether the award is appropriate,
97 the court shall take into consideration the * * * factors set
98 forth in subsection (g) above in addition to the financial
99 condition and net worth of the defendant, even if not admitted
100 before the trier of fact.

101 * * *

102 (k) The seller of a product other than the manufacturer
103 shall not be liable for punitive damages unless the seller
104 exercised substantial control over that aspect of the design,
105 testing, manufacture, packaging or labeling of the product that
106 caused the harm for which recovery of damages is sought; the
107 seller altered or modified the product, and the alteration or
108 modification was a substantial factor in causing the harm for
109 which recovery of damages is sought; the seller had actual
110 knowledge of the defective condition of the product at the time he
111 supplied same; or the seller made an express factual
112 representation about the aspect of the product which caused the
113 harm for which recovery of damages is sought.

114 * * *

115 (l) Punitive damages shall not exceed the greater of
116 three (3) times the amount of the total compensatory damages
117 awarded to the plaintiff or Five Hundred Thousand Dollars
118 (\$500,000.00), whichever is greater; and, if the defendant is an
119 individual or a business with less than fifty (50) full-time
120 employees, no award of punitive damages shall exceed three (3)
121 times the amount of the plaintiff's compensatory damages or Five
122 Hundred Thousand Dollars (\$500,000.00), whichever is less, unless
123 the finder of fact and court find by clear and convincing evidence
124 that the defendant acted with criminal intent to cause serious
125 physical bodily injury. This restriction shall not be disclosed



126 to the trier of fact but shall be applied by the court to any
127 punitive damages awarded.

128 (m) Only one (1) award for punitive damages may be made
129 against a defendant for the same act, decision, omission or course
130 of conduct. Punitive damages may not be awarded against a
131 defendant if punitive damages have been awarded in any prior
132 action against that defendant for the same act, decision,
133 omission, or course of conduct. For purposes of this section,
134 identical defects in individual units of a manufacturer's products
135 shall be deemed to be the same act, decision, omission or course
136 of conduct.

137 (n) Punitive damages shall not be awarded against a
138 defendant for any activity that is subject to regulation by any
139 agency of the United States or the State of Mississippi, if the
140 regulated activity was in compliance with applicable regulations
141 of the United States and this state.

142 (o) Punitive damages shall not be awarded against a
143 manufacturer or product seller if the aspect of the product's
144 manufacture, design, formulation, inspection, testing, packaging,
145 labeling or warning which caused the claimant's harm complied
146 with:

147 (i) Any federal statute in effect at the time the
148 product was produced;

149 (ii) Any administrative regulation in effect at
150 the time the product was produced that was promulgated by an
151 agency of the federal government which had responsibility to
152 regulate the safety of the product or to establish safety
153 standards for the product pursuant to a federal statute;

154 (iii) Any approval or certification made by an
155 agency of the federal government before the product was marketed;
156 or



157 (iv) Any state or local statute, ordinance, agency
158 regulation, agency certification applicable to the place where the
159 harm to the plaintiff allegedly occurred.

160 (p) Punitive damages shall not be awarded if a drug,
161 device, food, food additive or a combination of these items caused
162 the claimant's harm if:

163 (i) The item was subject to premarket approval or
164 licensure by the Federal Food and Drug Administration under the
165 "Federal Food, Drug, and Cosmetic Act," 21 USCS Section 301, et
166 seq., or the "Public Health Service Act," 42 USCS Section 201, et
167 seq., and was approved or licensed; or

168 (ii) Is generally recognized as safe and effective
169 pursuant to conditions established by the Federal Food and Drug
170 Administration and applicable regulation, including packaging and
171 labeling regulations.

172 (q) The prohibition against awarding punitive damages
173 in the circumstances described in paragraph (o) of this subsection
174 shall not apply when the plaintiff proves by clear and convincing
175 evidence that the defendant:

176 (i) Knowingly and in violation of applicable state
177 or federal agency regulations withheld or misrepresented
178 information required to be submitted to the agency, which
179 information was material and relevant to the harm in question; or

180 (ii) Made an illegal payment to an official of the
181 federal agency for the purpose of securing approval of the
182 activity or product as described in paragraph (l)(iii).

183 (3) If the application of this section, or of any portion of
184 it, to any person or circumstance is held invalid, the invalidity
185 shall not affect the application of this section to other persons
186 or circumstances which can be given effect without the invalid
187 provision or application.

188 (4) This section shall apply to any civil action pending or
189 filed on or after July 1, 2002.



190 **SECTION 2.** This act shall take effect and be in force from
191 and after July 1, 2002.

