

By: Representative Formby

To: Judiciary A

HOUSE BILL NO. 1234

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT PUNITIVE DAMAGES AWARDS SHALL BE USED AS COMPENSATION  
3 FOR VICTIMS OF CRIMES; AND FOR 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) In any action in which punitive damages are  
8 sought:

9 (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 (c) 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 (d) The court shall determine whether the issue of  
23 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 damages and in what amount.

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

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

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

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

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

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

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

60                   4. 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           (2) The seller of a product other than the manufacturer  
64 shall not be liable for punitive damages unless the seller  
65 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 which recovery of damages is sought; the seller had actual  
71 knowledge of the defective condition of the product at the time he  
72 supplied same; or the seller made an express factual  
73 representation about the aspect of the product which caused the  
74 harm for which recovery of damages is sought.

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

78                   (i) Twenty Million Dollars (\$20,000,000.00) for a  
79 defendant with a net worth of more than One Billion Dollars  
80 (\$1,000,000,000.00);

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

85                   (iii) Ten Million Dollars (\$10,000,000.00) for a  
86 defendant with a net worth of more than Five Hundred Million  
87 Dollars (\$500,000,000.00) but not more than Seven Hundred Fifty  
88 Million Dollars (\$750,000,000.00);

89                   (iv) Seven Million Five Hundred Thousand Dollars  
90 (\$7,500,000.00) for a defendant with a net worth of more than One  
91 Hundred Million Dollars (\$100,000,000.00) but not more than Five  
92 Hundred Million Dollars (\$500,000,000.00);

93                   (v) Five Million Dollars (\$5,000,000.00) for a  
94 defendant with a net worth of more than Fifty Million Dollars  
95 (\$50,000,000.00) but not more than One Hundred Million Dollars  
96 (\$100,000,000.00); or

97                   (vi) Four percent (4%) of the defendant's net  
98 worth for a defendant with a net worth of Fifty Million Dollars  
99 (\$50,000,000.00) or less.

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

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

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

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

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

118                 (e) The exceptions provided in paragraph (d) shall not  
119 apply to an employer of a person acting outside the scope of such  
120 person's employment or responsibility as an agent or employee.

121                 (4) Nothing in this section shall be construed as creating a  
122 right to an award of punitive damages or to limit the duty of the  
123 court, or the appellate courts, to scrutinize all punitive damage  
124 awards, ensure that all punitive damage awards comply with

125 applicable procedural, evidentiary and constitutional  
126 requirements, and to order remittitur where appropriate.

127 (5) Subsections (1) and (2) of this section shall not apply  
128 to:

129 (a) Contracts;

130 (b) Libel and slander; or

131 (c) Causes of action for persons and property arising  
132 out of asbestos.

133 (6) Punitive damages awards shall be distributed evenly  
134 throughout the state by circuit court district for use as  
135 compensation to victims of crimes. Such distribution shall  
136 supplement the restitution to crime victims as provided in Section  
137 99-37-1 et seq.

138 **SECTION 2.** This act shall take effect and be in force from  
139 and after July 1, 2004.