

By: Senator(s) White, Albritton, Burton,
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To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2184

1 AN ACT TO AMEND SECTION 11-1-65, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THE AUTHORITY OF THE COURT CONCERNING CERTAIN CIVIL
3 DAMAGES; 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 hold a * * *
20 hearing outside the presence of the jury to determine whether
21 punitive damages may be considered by the same trier of fact. The
22 court may conduct an evidentiary hearing at such time outside the
23 presence of the jury if such is necessary in making such
24 determination.

25 (d) The court shall determine whether the issue of
26 punitive damages may be submitted to the trier of fact; and, if

27 so, the trier of fact shall determine whether to award punitive
28 damages and in what amount.

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

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

50 (ii) In determining whether the award is
51 excessive, the court shall take into consideration the following
52 factors:

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

57 2. The degree of reprehensibility of the
58 defendant's conduct, the duration of that conduct, the defendant's

59 awareness, any concealment, and the existence and frequency of
60 similar past conduct;

61 3. The financial condition and net worth of
62 the defendant; and

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

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

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

79 (i) Twenty Million Dollars (\$20,000,000.00) for a
80 defendant with a net worth of more than One Billion Dollars
81 (\$1,000,000,000.00);

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

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

90 (iv) Three Million Seven Hundred Fifty Thousand
91 Dollars (\$3,750,000.00) for a defendant with a net worth of more

92 than One Hundred Million Dollars (\$100,000,000.00) but not more
93 than Five Hundred Million Dollars (\$500,000,000.00);

94 (v) Two Million Five Hundred Thousand Dollars
95 (\$2,500,000.00) for a defendant with a net worth of more than
96 Fifty Million Dollars (\$50,000,000.00) but not more than One
97 Hundred Million Dollars (\$100,000,000.00); or

98 (vi) Two percent (2%) of the defendant's net worth
99 for a defendant with a net worth of Fifty Million Dollars
100 (\$50,000,000.00) or less.

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

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

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

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

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

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

125 (5) Nothing in this section shall be construed as limiting a
126 court's authority in any claim for punitive damages to enter
127 summary judgment, directed verdict, or judgment notwithstanding
128 the verdict pursuant to the Mississippi Rules of Civil Procedure.

129 **SECTION 2.** This act shall take effect and be in force from
130 its passage.