

FIRST REGULAR SESSION

HOUSE BILL NO. 890

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MATHEWS.

1802H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 510.263 and 537.675, RSMo, and to enact in lieu thereof three new sections relating to punitive damage awards.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 510.263 and 537.675, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 510.259, 510.263, and 537.675, to read as follows:

510.259. 1. In any civil action in which a claimant seeks a punitive damage award, there shall be no such award unless the claimant proves to a trier of fact, by clear and convincing evidence, that:

(1) The party against whom the claim is asserted intentionally performed a wrongful act, with actual knowledge that the act was wrongful, and the act directly resulted in injury to the person or property of the claimant;

(2) The party against whom the claim is asserted engaged in conduct consisting of either the negligent performance of an act, or the negligent failure to perform an act which the party had a legal duty to perform; the conduct created a high probability of injury to the rights or safety of others; the conduct evidenced a conscious or intentional disregard of the rights or safety of others; and the conduct directly resulted in injury to the person or property of the claimant; or

(3) The party against whom the claim is asserted placed a defective product into the stream of commerce, with actual knowledge that the product was defective, or with a conscious or intentional disregard of whether the product was defective; and the defect directly resulted in injury to the person or property of the claimant; and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **(4) In addition to subdivisions (1) to (3) of this subsection, the conduct of the party**
18 **against whom the claim is asserted was sufficiently outrageous that the party should be**
19 **punished.**

20 **2. There shall be no punitive damage award in any civil action unless there is an**
21 **award of actual damages to the claimant resulting from the same conduct for which a**
22 **punitive damage award is sought.**

23 **3. There shall be no punitive damage award against an employer or a principal**
24 **because of the act or conduct of an employee or agent, other than, with respect to a legal**
25 **entity or partnership, the act or conduct of the president, chair, or principal executive**
26 **officer, the members of the governing body of the legal entity or partnership acting as such,**
27 **and any employee with policy making authority, unless:**

28 **(1) Prior to the act or conduct, the employer or principal, with a mental state**
29 **required for punitive damages under subsection 1 of this section, authorized the doing and**
30 **the manner of the act or conduct;**

31 **(2) During or after the act or conduct, the employer or principal, with a mental**
32 **state required for punitive damages under subsection 1 of this section and with full**
33 **knowledge of the doing and manner of the act or conduct, ratified it; or**

34 **(3) The employee or agent was unfit to perform acts or duties of the kind for which**
35 **a punitive damage award is sought, and the employer or principal, with a mental state**
36 **required for punitive damages under subsection 1 of this section, authorized the employee**
37 **or agent to perform acts or duties of that kind.**

38 **4. For purposes of this section, with respect to an employer or principal that is a**
39 **legal entity or partnership, only the act, conduct, authorization, ratification, or mental state**
40 **of or by:**

41 **(1) The president, chair, or chief executive officer;**

42 **(2) The members of the governing body of the legal entity or partnership, when**
43 **acting as such; and**

44 **(3) Any other officer, employee, or agent with policy-making authority;**

45

46 **shall be deemed to be the act, conduct, authorization, ratification, and mental state of the**
47 **employer or principal.**

48 **5. There shall be no punitive damage award in any civil action if the party against**
49 **whom such an award is sought demonstrates by a preponderance of the evidence that the**
50 **conduct for which a punitive damage award is sought was, or was reasonably believed to**
51 **be, in substantial compliance with any applicable federal, state, or other governmental**
52 **statute, regulation, or standard, if such statute, regulation, or standard was in effect at the**

53 time of the conduct and was intended to protect a class of persons or entities that included
54 the claimant from injury or damage of the kind for which the claimant seeks relief.

55 6. No initial pleading in a civil action may contain a claim for a punitive damage
56 award. Any later pleading containing a claim for a punitive damage award may be filed
57 only with leave of court. A trial court may grant leave to file such a pleading only on
58 written motion by the claimant, filed prior to the final pretrial conference in the case, and
59 supported by affidavits, exhibits, or discovery materials demonstrating that the standards
60 for a punitive damage award under this section are met. Any party opposing leave may
61 file affidavits, exhibits, or discovery materials demonstrating that the standards for a
62 punitive damage award under this section are not met. If the trial court concludes,
63 following its review of all materials submitted in connection with the motion, that based
64 on the evidence to be admitted at trial a reasonable trier of fact is likely to conclude, by
65 clear and convincing evidence, that the standards for a punitive damage award contained
66 in this section have been met, the court shall grant leave to file the pleading seeking a
67 punitive damage award.

68 7. No punitive damage award may be based, in whole or in part, on conduct
69 occurring outside of this state or directed outside this state, unless such conduct directly
70 resulted in injury or damage to a resident of this state or to a person or property within
71 this state.

72 8. As used in this section and section 510.263, the term "punitive damage award"
73 means an award for punitive or exemplary damages or an award for aggravating
74 circumstances.

75 9. No judgment that includes a punitive damage award shall be entered in any civil
76 action in any court of this state, or in any court in which claims are asserted based on the
77 constitution, statutes, or common law of this state, unless the requirements and procedures
78 for a punitive damage award contained in this section or sections 510.263 and 537.675 are
79 met.

80 10. Except to the extent that they are expressly inconsistent with this section, all
81 common law limitations on the recovery of a punitive damage award, and all limitations
82 on the recovery of a punitive damage award contained in other sections of the laws of this
83 state, remain in full force and effect.

84 11. The provisions of this section shall apply to any civil action:

85 (1) Pending on August 28, 2017, in which a claim for a punitive damage award has
86 been asserted in any pleading, unless in that action a verdict or judgment containing a
87 punitive damage award has been returned or entered prior to such date;

88 **(2) Pending on August 28, 2017, in which a party seeks, on or after such date, to**
89 **assert a claim for a punitive damage award; and**

90 **(3) Filed on or after August 28, 2017.**

 510.263. 1. All actions tried before a jury involving **a claim for a punitive [damages]**
2 **damage award**, including tort actions based upon improper health care, shall be conducted in
3 a bifurcated trial ~~[before the same jury if requested by any party].~~

4 2. In the first stage of a bifurcated **jury** trial~~[,]~~ in which the issue of punitive damages
5 ~~[is] has been found to be~~ **submissible**, the jury shall determine liability for compensatory
6 damages, the amount of compensatory damages, including nominal damages, and ~~[the liability~~
7 ~~of a defendant for punitive damages]~~ **whether the party from whom a punitive damage award**
8 **is sought should be held liable for a punitive damage award.** Evidence of ~~[defendant's]~~
9 financial condition, **if not relevant to any issue in the action other than the claim for a**
10 **punitive damage award**, shall not be admissible in the first stage ~~[of such trial unless~~
11 ~~admissible for a proper purpose other than the amount of punitive damages].~~

12 3. **If, after the first stage of a bifurcated trial, the jury returns a verdict finding that**
13 **a party should be liable for a punitive damage award, the clerk of the circuit court in**
14 **which the verdict was returned shall, within ten days of the return thereof, provide written**
15 **notice of the verdict to the attorney general.**

16 4. ~~[If during]~~ **Following such a verdict at** the first stage of a bifurcated trial, the ~~[jury~~
17 ~~determines that a defendant is liable for punitive damages, that jury shall determine, in a second~~
18 ~~stage of trial, the amount of punitive damages to be awarded against such defendant.]~~ **attorney**
19 **general shall have the sole authority to prosecute further, in the name of the claimant, the**
20 **claim seeking a punitive damage award. This shall occur in a second stage of trial, to be**
21 **held before a jury composed of persons who did not participate in the first trial, unless the**
22 **parties waive trial by jury. In the second stage of the bifurcated trial, the only issue to be**
23 **determined by the jury shall be the appropriate sum of punitive damages that will serve**
24 **to punish the party against whom a punitive damage award is sought for the conduct of**
25 **which that party has been found liable for punitive damages and that will serve to deter**
26 **that party and others from like conduct.** Evidence of ~~[such defendant's]~~ net worth of any
27 **party against whom a punitive damage award is sought** shall be admissible during the second
28 stage of such trial.

29 5. **In prosecuting any claim for punitive damages, the attorney general shall not**
30 **retain the services of counsel other than regularly salaried employees in the office of the**
31 **attorney general, except in the case of a demonstrated conflict of interest. In such cases,**
32 **the attorney general may retain special counsel, but such counsel may be compensated only**

33 **based on reasonable hourly rates plus expenses, and the attorney general shall not retain**
34 **such special counsel on a contingent fee basis.**

35 ~~[4.]~~ **6. Following the second stage of the bifurcated trial and** within the time for filing
36 a motion for new trial, a ~~[defendant]~~ **party against whom a punitive damage award has been**
37 **made** may file a ~~[post-trial]~~ motion requesting ~~[the]~~ **that any** amount awarded ~~[by the jury]~~ as
38 punitive damages be credited ~~[by the court]~~ with amounts **which that party has** previously paid
39 ~~[by the defendant for]~~ **as** punitive damages arising out of the same conduct on which the
40 ~~[imposition of]~~ punitive ~~[damages]~~ **damage award** is based. At any hearing **on such a motion,**
41 the burden on all issues relating to such a credit shall be on the ~~[defendant and either party may~~
42 ~~introduce relevant evidence on such motion]~~ **party against whom a punitive damage award**
43 **has been made. Any party may introduce relevant evidence on such motion.** Such a motion
44 shall be determined by the trial court within the time and according to procedures applicable to
45 motions for new trial. If the trial court sustains such a motion, the trial court shall credit **against**
46 the jury award of punitive damages ~~[by]~~ the amount **that the court has** found ~~[by the trial court]~~
47 to have been previously paid ~~[by the defendant arising out of the same conduct]~~ **as punitive**
48 **damages** and **shall** enter judgment accordingly. If the ~~[defendant]~~ **party** fails to establish
49 entitlement to a credit under the provisions of this section, or the trial court finds from the
50 evidence that the ~~[defendant's]~~ **party's** conduct out of which the prior punitive damages award
51 arose was not the same conduct on which the imposition of punitive damages is based in the
52 pending action, or the trial court finds the ~~[defendant]~~ **party** unreasonably continued the conduct
53 after acquiring actual knowledge of the dangerous nature of such conduct, the trial court shall
54 ~~[disallow]~~ **not allow** such credit~~[, or,]~~ . If the trial court finds that the laws regarding punitive
55 damages in the state in which the prior award of punitive damages was entered substantially and
56 materially deviate from the law of the state of Missouri and that the nature of such deviation
57 provides good cause for disallowance of the credit based on the public policy of Missouri, then
58 the trial court may disallow all or any part of the credit provided by this section.

59 ~~[5.]~~ **7.** The credit allowable under this section shall not apply to causes of action for libel,
60 slander, assault, battery, false imprisonment, criminal conversation, malicious prosecution or
61 fraud.

62 ~~[6.]~~ **8.** The doctrines of remittitur and additur, based on the trial judge's assessment of
63 the totality of the surrounding circumstances, shall apply to punitive damage awards.

64 ~~[7. As used in this section, "punitive damage award" means an award for punitive or~~
65 ~~exemplary damages or an award for aggravating circumstances.]~~

66 ~~———8.]~~ **9. Unless relevant to a claim pending in a civil action other than a claim for a**
67 **punitive damage award,** discovery ~~[as to]~~ **concerning a [defendant's] party's net worth,** assets,
68 **or other financial condition** shall be allowed only after ~~[a finding by]~~ the ~~[trial]~~ court ~~[that it~~

69 ~~is more likely than not that the plaintiff will be able to present a submissible case to the trier of~~
70 ~~fact on the plaintiff's claim of punitive damages]~~ **has allowed the filing of a petition or other**
71 **pleading that contains a claim for a punitive damage award under section 510.259.**

72 **10. Any punitive damage award shall be distributed as provided for under section**
73 **537.675.**

74 **11. The provisions of this section shall apply to any civil action:**

75 **(1) Pending on August 28, 2017, in which a claim for a punitive damage award has**
76 **been asserted in any pleading, unless in that action a verdict or judgment containing a**
77 **punitive damage award has been returned or entered prior to such date;**

78 **(2) Pending on August 28, 2017, in which a party seeks, on or after such date, to**
79 **assert a claim for a punitive damage award; and**

80 **(3) Filed on or after August 28, 2017.**

537.675. 1. As used in sections 537.675 through 537.693, the following terms mean:

2 (1) "Annual claims", that period of time commencing on the first day of January of every
3 year after December 31, 2002, and ending on the last day of that calendar year;

4 (2) "Commission", the labor and industrial relations commission;

5 (3) "Division", the division of workers' compensation;

6 (4) "Punitive damage final judgment", an award for punitive damages excluding interest
7 that is no longer subject to review by courts of this state or of the United States;

8 (5) "Uncompensated tort victim", a person who:

9 (a) Is a party in a personal injury or wrongful death lawsuit; or is a tort victim whose
10 claim against the tort-feasor has been settled for the policy limits of insurance covering the
11 liability of such tort-feasor and such policy limits are inadequate in light of the nature and extent
12 of damages due to the personal injury or wrongful death;

13 (b) Unless described in paragraph (a) of this subdivision:

14 a. Has obtained a final monetary judgment in that lawsuit described in paragraph (a) of
15 this subdivision against a tort-feasor for personal injuries, or wrongful death in a case in which
16 all appeals are final;

17 b. Has exercised due diligence in enforcing the judgment; and

18 c. Has not collected the full amount of the judgment;

19 (c) Is not a corporation, company, partnership or other incorporated or unincorporated
20 commercial entity;

21 (d) Is not any entity claiming a right of subrogation;

22 (e) Was not on house arrest and was not confined in any federal, state, regional, county
23 or municipal jail, prison or other correctional facility at the time he or she sustained injury from
24 the tort-feasor;

25 (f) Has not pleaded guilty to or been found guilty of two or more felonies, where such
26 two or more felonies occurred within ten years of the occurrence of the tort in question, and
27 where either of such felonies involved a controlled substance or an act of violence; and

28 (g) Is a resident of the state of Missouri or sustained personal injury or death by a tort
29 which occurred in the state of Missouri.

30 2. There is created the "Tort Victims' Compensation Fund". Unexpended moneys in the
31 fund shall not lapse at the end of the biennium as provided in section 33.080.

32 3. ~~[Any party receiving a judgment final for purposes of appeal for punitive damages in
33 any case filed in any division of any circuit court of the state of Missouri shall notify the attorney
34 general of the state of Missouri of such award, except for actions claiming improper health care
35 pursuant to chapter 538.]~~ The state of Missouri shall have a lien for deposit into the tort victims'

36 compensation fund to the extent of ~~[fifty]~~ **eighty-five** percent of the punitive damage final
37 judgment ~~[which shall attach in any such case after deducting attorney's fees and expenses]~~ ;
38 **except that, the attorney general may petition the court that presided over the trial in**
39 **which punitive damages were awarded for costs and expenses, which shall be granted from**
40 **the state's share of the award for punitive damages so long as no less than fifty percent of**
41 **the punitive damage final judgment is deposited into the tort victims' compensation fund.**

42 In each case, the attorney general shall serve a lien notice by certified mail or registered mail
43 upon the party or parties against whom the state has a claim for collection of its share of a
44 punitive damage final judgment. On a petition filed by the state, the court, on written notice to
45 all interested parties, shall adjudicate the rights of the parties and enforce the lien. The lien shall
46 not be satisfied out of any recovery until the attorney's claim for fees and expenses is paid. The
47 state can file its lien in all cases where punitive damages are awarded upon the entry of the
48 judgment final for purposes of appeal. The state cannot enforce its lien until there is a punitive
49 damage final judgment. Cases resolved by arbitration, mediation or compromise settlement prior
50 to a punitive damage final judgment are exempt from the provisions of this section. Nothing in
51 this section shall hinder or in any way affect the right or ability of the parties to any claim or
52 lawsuit to compromise or settle such claim or litigation on any terms and at any time the parties
53 desire.

54 4. **Except as provided in section 510.263,** the state of Missouri shall have no interest
55 in or right to intervene at any stage of any judicial proceeding pursuant to this section, except to
56 enforce its lien rights as provided in subsection 3 of this section.

57 5. Twenty-six percent of all payments deposited into the tort victims' compensation fund
58 and all interest accruing on the principal regardless of source or designation shall be transferred
59 to the basic civil legal services fund established in section 477.650. Moneys in the tort victims'

60 compensation fund shall not be used to pay any portion of a refund mandated by article X,
61 section 18 of the constitution.

62 **6. The provisions of this section shall apply to any civil action:**

63 **(1) Pending on August 28, 2017, in which a claim for a punitive damage award has**
64 **been asserted in any pleading, unless in that action a verdict or judgment containing a**
65 **punitive damage award has been returned or entered prior to such date;**

66 **(2) Pending on August 28, 2017, in which a party seeks, on or after such date, to**
67 **assert a claim for a punitive damage award; and**

68 **(3) Filed on or after August 28, 2017.**

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