

HCS HB 890 -- PUNITIVE DAMAGES

SPONSOR: Mathews

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Special Committee on Litigation Reform by a vote of 9 to 4. Voted "Do Pass" by the Committee on Rules- Legislative Oversight by a vote of 9 to 2.

This bill specifies that in any action seeking recovery of punitive damages, the claimant must prove by clear and convincing evidence that the party against whom the claim for punitive damages is asserted intentionally performed a wrongful act with actual knowledge that the act was wrongful, engaged in a negligent act or failure to act that created a high probability of injury and evidenced a conscious disregard for the rights or safety of others, or with actual knowledge placed a defective product in the stream of commerce.

In addition, no punitive damages can be awarded unless there is an award of actual damages, against an employer or principal because of the act or conduct of an employee or agent unless certain specified conditions are met, or if the party demonstrates substantial compliance with an applicable statute, regulation or standard.

No petition or other pleading can be filed containing a claim for punitive damages. The court may grant leave to file a claim for punitive damages, upon the filing of a written motion with documentation by a claimant, after making a finding by clear and convincing evidence that the standards for a punitive damage award have been met.

In the first stage of a bifurcated jury trial involving a claim for punitive damages the jury will determine whether a party should be liable for a punitive damage award. If a jury finds a party liable for punitive damages, the circuit clerk has 10 days to provide written notice to the Attorney General. The Attorney General shall have sole authority to prosecute in the name of the plaintiff the punitive damages phase of a trial as a separate case in front of a new jury. The Attorney General is prohibited from hiring outside legal counsel, except in a case of demonstrable conflicts of interest and requires the outside counsel to only be paid a reasonable hourly rate for work completed.

Eighty-five percent of all moneys collected from this stage will be deposited into the Missouri Tort Victims Compensation Fund. The Attorney General may petition the court for costs and expenses provided that no less than 50% of the award is deposited in the

Tort Victims Compensation Fund.

The provisions of this bill apply to any civil action pending on or filed after August 28, 2017.

This bill is similar to HB 2458 (2016).

PROPONENTS: Supporters say that the bill codifies and clarifies the law regarding punitive damages. The provisions allow a wrongdoer to be punished within reasonable limits. The Attorney General is in the best position to represent the people's interest in the punitive damage phase of the trial.

Testifying for the bill were Representative Mathews; Missouri Chamber of Commerce and Industry; and Richard A. Ahrens, Associated Industries of Missouri.

OPPONENTS: Those who oppose the bill say that taxpayers will have to pay the costs for a second trial, including for the second trial team, court, and clerk. This will increase the workload on the Attorney General which will require additional staff. In addition, the practical effect of this bill is to give immunity for punitive damages as a plaintiff will have no incentive to file a punitive damage claim.

Testifying against the bill was Dave Zevan, MATA.