

SECOND REGULAR SESSION

HOUSE BILL NO. 2119

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MATHEWS.

5712H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 510.263, RSMo, and to enact in lieu thereof two new sections relating to punitive damages.

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

Section A. Section 510.263, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 510.259 and 510.263, to read as follows:

510.259. 1. Except as otherwise provided by statute, punitive damages shall not be awarded unless the claimant proves by clear and convincing evidence that the defendant wrongfully and intentionally harmed the plaintiff without just cause or excuse.

2. Punitive damages may only be recovered if the trier of fact awards more than nominal damages.

3. Punitive damages shall not be awarded against an employer or a principal because of the act or conduct of an employee or agent unless the claimant can satisfy the standard of proof in subsection 1 of this section and:

(1) Prior to the act or conduct, the employer or principal wrongfully and intentionally authorized the doing and manner of the act or conduct;

(2) During or after the act or conduct, the employer or principal, with full knowledge of the doing and manner of the act or conduct, wrongfully and intentionally ratified the act or conduct; or

(3) The employee or agent was unfit to perform acts or duties of the kind for which a punitive damage award is sought, and the employer or principal wrongfully and intentionally authorized the employee or agent to perform acts or duties of that kind.

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. For purposes of this section, with respect to an employer or principal that is a**
18 **legal entity or partnership, only the act, conduct, authorization, ratification, or intention**
19 **of or by:**

- 20 **(1) The president, chair, or chief executive officer;**
21 **(2) The members of the governing body of the legal entity or partnership, when**
22 **acting as such; or**
23 **(3) Any other officer, employee, or agent with policy-making authority**
24

25 **shall be deemed to be the act, conduct, authorization, ratification, or intention of the**
26 **employer or principal.**

27 **5. No initial pleading in a civil action shall contain a claim for a punitive damage**
28 **award. Any later pleading containing a claim for a punitive damage award may be filed**
29 **only with leave of the court. A trial court may grant leave to file such a pleading only on**
30 **written motion by the claimant, filed no later than one hundred twenty days prior to the**
31 **final pretrial conference in the case or, if there is no scheduled pretrial conference, one**
32 **hundred twenty days prior to the date set for trial, supported by evidence in the record**
33 **which would provide a reasonable basis for recovery of such damages. Any party opposing**
34 **leave may file affidavits, exhibits, or discovery materials demonstrating that the standards**
35 **for a punitive damage award under this section are not met. If the trial court concludes,**
36 **following its review of all materials submitted in connection with the motion, that based**
37 **on the evidence to be admitted at trial a reasonable trier of fact is likely to conclude, by**
38 **clear and convincing evidence, that the standards for a punitive damage award contained**
39 **in this section have been met, the court shall grant leave to file the pleading seeking a**
40 **punitive damage award. Said motion shall be ruled on within forty-five days of the latter**
41 **of the court hearing the motion or the opposing party filing its response in opposition to**
42 **the motion.**

43 **6. Punitive damages shall not be based, in whole or in part, on harm to nonparties.**

44 **7. As used in this section, the term "punitive damage award" means an award for**
45 **punitive or exemplary damages or an award for aggravating circumstances.**

46 **8. No judgment that includes a punitive damage award shall be entered in any civil**
47 **action in any court of this state, or in any court in which claims are asserted based on the**
48 **constitution, statutes, or common law of this state, unless the requirements and procedures**
49 **for a punitive damage award contained in this section and sections 510.263 and 537.675 are**
50 **met.**

51 **9. Except to the extent that they are expressly inconsistent with this section, all**
52 **common law limitations on punitive damages, including the doctrine of remittitur, and all**

53 limitations on the recovery of punitive damages contained in other sections of the laws of
54 this state remain in full force and effect.

55 **10. The provisions of this section shall apply to:**

56 **(1) Any civil action pending on August 28, 2018, in which a claim for a punitive**
57 **damage award has been asserted in any pleading, unless in that action a verdict or**
58 **judgment containing a punitive damage award has been returned or entered prior to such**
59 **date;**

60 **(2) Any civil action pending on August 28, 2018, in which a party seeks, on or after**
61 **such date, to assert a claim for a punitive damage award; and**

62 **(3) Any civil action filed on or after August 28, 2018.**

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

4 2. In the first stage of a bifurcated trial, ~~[in which the issue of punitive damages is~~
5 ~~submissible,]~~ the jury shall determine ~~[liability for]~~ **whether** compensatory damages~~[, the~~
6 ~~amount of compensatory damages, including nominal damages, and the liability of a defendant~~
7 ~~for]~~ **are to be awarded and in what amount, but shall not address any issues related solely**
8 **to punitive damages.** Evidence of defendant's financial condition shall ~~[not]~~ be ~~[admissible]~~
9 **inadmissible** in the first stage of such trial unless ~~[admissible]~~ **offered** for a proper purpose
10 ~~[other than the amount of]~~ **unrelated to** punitive damages.

11 3. ~~[If during the first stage of a bifurcated trial the jury determines that a defendant is~~
12 ~~liable for punitive damages, that]~~ **If an award of compensatory damages above nominal**
13 **damages has been made against a defendant, the court shall promptly commence a hearing**
14 **to determine whether punitive damages may be considered by the same jury. The court**
15 **shall determine whether the issue of punitive damages may be submitted to the jury and,**
16 **if so, the jury shall determine**~~[, in a second stage of trial, the amount of]~~ **whether to award**
17 **punitive damages** ~~[to be awarded against such defendant]~~ **and in what amount.** Evidence of
18 such defendant's net worth shall be admissible during the second stage of such trial.

19 4. Within the time for filing a motion for new trial, a defendant may file a post-trial
20 motion requesting the amount awarded by the jury as punitive damages be credited by the court
21 with amounts previously paid **in any state or federal court** by the defendant for punitive
22 damages arising out of the same conduct on which the imposition of punitive damages is based.
23 At any hearing, the burden on all issues relating to such a credit shall be on the defendant and
24 either party may introduce relevant evidence on such motion. Such a motion shall be determined
25 by the trial court within the time and according to procedures applicable to motions for new trial.
26 If the trial court sustains such a motion the trial court shall credit the jury award of punitive

27 damages by the amount found by the trial court to have been previously paid by the defendant
28 arising out of the same conduct and enter judgment accordingly. If the defendant fails to
29 establish entitlement to a credit under the provisions of this section, or the trial court finds from
30 the evidence that the defendant's conduct out of which the prior punitive damages award arose
31 was not the same conduct on which the imposition of punitive damages is based in the pending
32 action, or the trial court finds the defendant unreasonably continued the conduct after acquiring
33 actual knowledge of the dangerous nature of such conduct, the trial court shall disallow such
34 credit, or, if the trial court finds that the laws regarding punitive damages in the state **or federal**
35 **court** in which the prior award of punitive damages was entered substantially and materially
36 deviate from the law of the state of Missouri, **except with respect to section 537.675**, and that
37 the nature of such deviation provides good cause for disallowance of the credit based on the
38 public policy of Missouri, then the trial court may disallow all or any part of the credit provided
39 by this section.

40 5. The credit allowable under this section shall not apply to causes of action for libel,
41 slander, assault, battery, false imprisonment, criminal conversation, malicious prosecution or
42 fraud.

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

45 ~~———7.]~~ As used in this section, "punitive damage award" means an award for punitive or
46 exemplary damages or an award for aggravating circumstances.

47 [8.] 7. Discovery as to a defendant's assets shall be allowed only after a finding by the
48 trial court that it is more likely than not that the plaintiff will be able to present a submissible
49 case to the trier of fact on the plaintiff's claim ~~[of]~~ **for** punitive damages.

50 **8. The provisions of this section shall apply to:**

51 **(1) Any civil action pending on August 28, 2018, in which a claim for a punitive**
52 **damage award has been asserted in any pleading, unless in that action a verdict or**
53 **judgment containing a punitive damage award has been returned or entered prior to such**
54 **date;**

55 **(2) Any civil action pending on August 28, 2018, in which a party seeks, on or after**
56 **such date, to assert a claim for a punitive damage award; and**

57 **(3) Any civil action filed on or after August 28, 2018.**

✓