

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 729
Committee Substitute Favorable 4/26/95

Short Title: Punitive Damages in Civil Actions.

(Public)

Sponsors:

Referred to:

April 3, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH STANDARDS AND PROCEDURES FOR THE
3 RECOVERY OF PUNITIVE DAMAGES IN CIVIL ACTIONS.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes are amended by adding a new Chapter to read:

6 **"CHAPTER 1D.**

7 **"PUNITIVE DAMAGES.**

8 **"§ 1D-1. Purpose of punitive damages.**

9 Punitive damages may be awarded, in an appropriate case and subject to the
10 provisions of this Chapter, to punish a defendant for egregiously wrongful acts and to
11 deter the defendant and others from committing similar wrongful acts.

12 **"§ 1D-5. Definitions.**

13 As used in this Chapter:

- 14 (1) 'Claimant' means a party, including a plaintiff, counterclaimant, cross-
15 claimant, or third-party plaintiff, seeking recovery of punitive damages.
16 In a claim for relief in which a party seeks recovery of punitive damages
17 related to injury to another person, damage to the property of another
18 person, death of another person, or other harm to another person,
19 'claimant' includes any party seeking recovery of punitive damages.

- 1 (2) 'Compensatory damages' includes nominal damages.
2 (3) 'Defendant' means a party, including a counterdefendant, cross-
3 defendant, or third-party defendant, from whom a claimant seeks relief
4 with respect to punitive damages.
5 (4) 'Fraud' does not include constructive fraud.
6 (5) 'Malice' means a sense of personal ill will toward the claimant that
7 activated or incited the defendant to perform the act or undertake the
8 conduct that resulted in harm to the claimant.
9 (6) 'Punitive damages' means extracompensatory damages awarded for the
10 purposes set forth in G.S. 1D-1.
11 (7) 'Willful conduct' means the conscious and intentional disregard by the
12 defendant of the rights and safety of other persons with actual awareness
13 that serious harm will, in reasonable probability, result to another
14 person. 'Willful conduct' means more than gross negligence.

15 **"§ 1D-10. Scope of the Chapter.**

16 This Chapter applies to every claim for punitive damages, regardless of whether the
17 claim for relief is based on a statutory or a common-law right of action or based in equity.
18 In an action subject to this Chapter, in whole or in part, the provisions of this Chapter
19 prevail over any other law to the contrary.

20 **"§ 1D-15. Standards for recovery of punitive damages.**

21 (a) Punitive damages may be awarded only if the claimant proves that the
22 defendant is liable for compensatory damages and that one of the following aggravating
23 factors caused the claimant's injury:

- 24 (1) Fraud.
25 (2) Malice.
26 (3) Willful conduct.

27 (b) The claimant must prove the existence of an aggravating factor by clear and
28 convincing evidence.

29 (c) Punitive damages shall not be awarded against a person solely on the basis of
30 vicarious liability for the acts or omissions of another or for breach of contract.

31 **"§ 1D-20. Election of extracompensatory remedies.**

32 Punitive damages shall not be awarded to a claimant, pursuant to G.S. 1D-40, who
33 elects a remedy pursuant to another statute that provides for multiple damages.

34 **"§ 1D-25. Harm resulting from regulated activities.**

35 (a) Except as provided in subsection (b) of this section, a court shall not award
36 punitive damages if the harm with respect to which the claimant seeks recovery of
37 punitive damages results from any one or more of the following:

- 38 (1) Conduct or a product that is subject to rules or regulations by a State or
39 federal agency.
40 (2) A product whose design, formulation, testing, packaging, labeling, or
41 warning is subject to statutory requirements enacted by the General
42 Assembly or by the United States Congress.

1 (3) A product whose design, formulation, testing, packaging, labeling, or
2 warning was approved or certified before sale by a State or federal
3 agency.

4 (b) Punitive damages may be awarded if the claimant proves any of the following:

5 (1) The defendant did not substantially comply with the applicable rules,
6 regulations, or statutory requirements in a manner material to the injury
7 for which the claimant has been awarded compensatory damages.

8 (2) The injury resulted from an element or aspect of the conduct that is
9 neither regulated under subdivision (1) or (2) of subsection (a) nor
10 approved or certified under subdivision (3) of subsection (a).

11 (3) The defendant knowingly and in violation of law withheld or
12 misrepresented material information required to be submitted to the
13 agency.

14 (4) The defendant made an illegal payment to an official of the agency to
15 secure approval of the conduct or product in question.

16 (c) Nothing contained in this section is intended to create a private right of action
17 that does not already exist under a statute.

18 **"§ 1D-30. Limitation of amount of recovery.**

19 (a) In all actions seeking an award of punitive damages, the trier of fact shall
20 determine the amount of punitive damages separately from the amount of compensation
21 for all other damages.

22 (b) Punitive damages awarded against a defendant shall not exceed three times the
23 amount of compensatory damages, or two hundred fifty thousand dollars (\$250,000),
24 whichever is greater. If a trier of fact returns a verdict for punitive damages in excess of
25 the maximum amount specified under this subsection, the trial court shall reduce the
26 award and enter judgment for punitive damages in the maximum amount.

27 The trial court shall reduce the award of punitive damages by the amount of punitive
28 damages previously awarded by final judgment in any jurisdiction for the same act or
29 course of conduct, unless the act or course of conduct giving rise to the present action
30 occurred after the first award of punitive damages by final judgment in any jurisdiction.
31 The reduction for punitive damages previously awarded shall be in addition to any
32 reduction ordered by the court under this section for a punitive damages verdict that
33 exceeds the maximum allowed under this section. The manufacture or sale of multiple
34 identical or substantially identical units of a product line prior to the first award of
35 punitive damages by a jurisdiction is a single act or course of conduct for purposes of this
36 section.

37 (c) Neither the provisions of subsection (b) of this section nor the fact that the
38 State may receive a portion of an award of punitive damages shall be made known to the
39 trier of fact through any means, including through: voir dire, the introduction into
40 evidence, argument, or instructions to the jury.

41 **"§ 1D-35. Bifurcated trial.**

42 Upon the motion of a defendant, the issues of liability for compensatory damages and
43 the amount of compensatory damages, if any, shall be tried separately from the issues of

1 liability for punitive damages and the amount of punitive damages, if any. Evidence
2 relating solely to punitive damages shall not be admissible until the trier of fact has
3 determined that the defendant is liable for compensatory damages and has determined the
4 amount of compensatory damages. The same trier of fact that tried the issues relating to
5 compensatory damages shall try the issues relating to punitive damages.

6 **"§ 1D-40. Punitive damages awards.**

7 (a) In determining the amount of punitive damages, if any, to be awarded, the trier
8 of fact:

9 (1) Shall consider the purposes of punitive damages set forth in G.S. 1D-1;
10 and

11 (2) May consider only that evidence that relates to the:

12 a. Reprehensibility of the defendant's motives;

13 b. Likelihood, at the relevant time, of serious harm;

14 c. Degree of the defendant's awareness of the likelihood of serious
15 harm;

16 d. Duration of the defendant's misconduct;

17 e. Actual damages suffered by the claimant; and

18 f. The defendant's ability to pay punitive damages, as evidenced by
19 its gross or net revenues.

20 (b) The court shall determine that portion of the punitive damages that are awarded
21 pursuant to subsection (a) of this section to be paid for all reasonable attorneys' fees
22 incurred by the claimant in pursuing both the claim for compensatory damages and the
23 claim for punitive damages. All punitive damages in excess of these attorneys' fees
24 awarded under this subsection shall be forwarded to the State Treasurer for deposit in the
25 General Fund.

26 (c) The provisions of this Chapter shall not create any rights for the State. The
27 Attorney General shall not assert the rights of the General Fund in any administrative or
28 judicial proceeding for purposes of enforcing any claim on behalf of the General Fund for
29 punitive damages pursuant to this section; provided, either the plaintiff or the Attorney
30 General may institute a proceeding to enforce a judgment.

31 **"§ 1D-45. Jury instructions.**

32 In a jury trial, the court shall instruct the jury with regard to subdivisions (1) and
33 (2) of G.S. 1D-40(a).

34 **"§ 1D-50. Frivolous or malicious actions; attorneys' fees.**

35 The court shall award reasonable attorneys' fees against a claimant who files a claim
36 for punitive damages that the claimant knows or should have known to be frivolous or
37 malicious.

38 **"§ 1D-55. Judicial review of award.**

39 When reviewing the evidence regarding a finding by the trier of fact concerning
40 liability for punitive damages in accordance with G.S. 1D-15(a), or regarding the amount
41 of punitive damages awarded, a trial or appellate court shall state in a written opinion its
42 reasons for upholding or disturbing the finding or award. In doing so, the court shall

1 address with specificity the evidence, or lack thereof, as it bears on the liability for or the
2 amount of punitive damages, in light of the requirements of this Chapter."

3 Sec. 2. G.S. 28A-18-2(b) reads as rewritten:

4 "(b) Damages recoverable for death by wrongful act include:

5 (1) Expenses for care, treatment and hospitalization incident to the injury
6 resulting in death;

7 (2) Compensation for pain and suffering of the decedent;

8 (3) The reasonable funeral expenses of the decedent;

9 (4) The present monetary value of the decedent to the persons entitled to
10 receive the damages recovered, including but not limited to
11 compensation for the loss of the reasonable expected;

12 a. Net income of the decedent,

13 b. Services, protection, care and assistance of the decedent, whether
14 voluntary or obligatory, to the persons entitled to the damages
15 recovered,

16 c. Society, companionship, comfort, guidance, kindly offices and
17 advice of the decedent to the persons entitled to the damages
18 recovered.

19 (5) Such punitive damages as the decedent could have recovered pursuant
20 to G.S. 1D-40 had he survived, and punitive damages for wrongfully
21 causing the death of the decedent through ~~maliciousness, wilful or wanton~~
22 ~~injury, or gross negligence;~~ malice or willful conduct, as defined in G.S.
23 1D-5;

24 (6) Nominal damages when the jury so finds."

25 Sec. 3. G.S. 1A-1, Rule (9), is amended by adding a new subsection to read as
26 follows:

27 "(j) Punitive damages. – A demand for punitive damages shall be specifically
28 stated, except for the amount, and the circumstances supporting their award shall be
29 averred with particularity. The amount of damages shall be pled in accordance with Rule
30 8."

31 Sec. 4. The provisions of this act are severable. If any portion of this act is
32 declared unconstitutional or the application of this act to any person or circumstances is
33 held invalid, the remaining portions and their applicability to any person or circumstances
34 are valid.

35 Sec. 5. This act becomes effective October 1, 1995, and applies to any civil
36 actions arising on or after that date.