

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 729

Short Title: Punitive Damages in Civil Actions.

(Public)

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Sponsors: Representatives Neely; Berry, Bowie, Brawley, J. Brown, Buchanan, Cansler, Cocklereece, Crawford, Daughtry, Dickson, Ellis, Gamble, Gardner, Hayes, Hill, Hurley, Ives, Kiser, McComas, McMahan, Miner, Morgan, Owens, Preston, Redwine, Robinson, Russell, Sexton, Sharpe, Shubert, Snowden, Thompson, Weatherly, Wilkins, C. Wilson, and Wood.

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Referred to: Rules, Calendar and Operations of the House.

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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 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

1 related to injury to another person, damage to the property of another  
2 person, death of another person, or other harm to another person,  
3 'claimant' includes any party seeking recovery of punitive damages.

4 (2) 'Defendant' means a party, including a counterdefendant, cross-  
5 defendant, or third-party defendant, from whom a claimant seeks relief  
6 with respect to punitive damages.

7 (3) 'Fraud' does not include constructive fraud.

8 (4) 'Malice' means a sense of personal ill will toward the claimant that  
9 activated or incited the defendant to perform the act or undertake the  
10 conduct that resulted in harm to the claimant.

11 (5) 'Punitive damages' means extracompensatory damages awarded for the  
12 purposes set forth in G.S. 1D-1.

13 (6) 'Willful' means conscious and intentional disregard of the rights and  
14 safety of other persons.

15 (7) 'Willful conduct' means conduct undertaken by the defendant with  
16 actual awareness that serious harm will, in reasonable probability, result  
17 to another person. 'Willful conduct' does not include gross negligence.

18 **"§ 1D-10. Scope of the Chapter.**

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

23 **"§ 1D-15. Standards for recovery of punitive damages.**

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

27 (1) Fraud.

28 (2) Malice.

29 (3) Willful conduct.

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

32 (c) Punitive damages shall not be awarded against a person when the claim for  
33 relief is based on vicarious liability or based on breach of contract.

34 **"§ 1D-20. Election of extracompensatory remedies.**

35 Punitive damages shall not be awarded to a claimant, pursuant to G.S. 1D-45, who  
36 elects a remedy pursuant to another statute that provides for multiple damages.

37 **"§ 1D-25. Previous punitive damages awards against defendant.**

38 (a) Except as provided in subsection (d) of this section, a court shall not award  
39 punitive damages if:

40 (1) Punitive damages have been previously awarded against the defendant  
41 by a court in any jurisdiction, and

1           (2)    The harm with respect to which the claimant seeks recovery of punitive  
2                damages resulted from the same act or course of conduct that formed  
3                the basis of the previous punitive damage award.

4           (b)    On request of a defendant, the court shall conduct a pretrial hearing at which  
5                the defendant may present evidence that punitive damages have been previously awarded  
6                against the defendant based on the same act or course of conduct for which the claimant  
7                seeks punitive damages in the present action.

8           (c)    Except as provided in subsection (d) of this section, if the defendant at the  
9                pretrial hearing presents prima facie evidence of a previous award of punitive damages as  
10              described under subsection (a) of this section, the claimant shall not present a claim for  
11              punitive damages during the trial of the present action.

12          (d)    Punitive damages may be awarded even though subdivisions (1) and (2) of  
13                subsection (a) of this section apply, if the claimant establishes all of the following at the  
14                pretrial hearing:

15           (1)    Substantial new evidence of one or more aggravating factors exists.

16           (2)    The new evidence under subdivision (1) of this subsection was not  
17                available at the time the previous punitive damage award was entered.

18           (3)    The new evidence under subdivision (1) of this subsection establishes  
19                that the defendant's culpability was greater in degree or kind than the  
20                culpability established by the evidence available at the time the previous  
21                punitive damage award was entered.

22          (e)    If punitive damages are awarded under subsection (d) of this section, the court  
23                shall reduce the amount of punitive damages awarded by the amount of all previous  
24                punitive damage awards against the defendant based on the same act or course of  
25                conduct.

26          (f)    For the purposes of this section, the manufacture or sale of multiple identical  
27                units of a product line is a single act or course of conduct.

28        **"§ 1D-30. Harm resulting from regulated activities.**

29          (a)    Except as provided in subsections (b) and (c) of this section, a court shall not  
30                award punitive damages if the harm with respect to which the claimant seeks recovery of  
31                punitive damages results from any one or more of the following:

32           (1)    Conduct or a product that is subject to rules or regulations by a State or  
33                federal agency.

34           (2)    A product whose design, formulation, testing, packaging, labeling, or  
35                warning is subject to statutory requirements enacted by the General  
36                Assembly or by the United States Congress.

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

40           (4)    A prescription drug labeling that was subject to premarket approval by  
41                the United States Food and Drug Administration (FDA) pursuant to the  
42                Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301-392, as

1            amended, and was approved pursuant to conditions and requirements  
2            established by the FDA, including packaging and labeling regulations.

3            (b) Punitive damages may be awarded even though subdivision (1) or (2) of  
4 subsection (a) of this section applies, if the claimant proves that the defendant did not  
5 substantially comply with the applicable rules or regulations or did not comply with  
6 statutory requirements in a manner material to the injury for which the claimant has been  
7 awarded compensatory damages.

8            (c) Punitive damages may be awarded even though subdivision (3) or (4) of  
9 subsection (a) of this section applies, if the claimant proves that the defendant:

10            (1) Knowingly and in violation of law withheld or misrepresented material  
11 information required to be submitted to the agency; or

12            (2) Made an illegal payment to an official of the agency to secure approval  
13 of the conduct or product in question.

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

16 **"§ 1D-35. Limitation of amount of recovery.**

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

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

25            (c) The provisions of subsection (b) of this section shall not be made known to the  
26 trier of fact through any means, including through: voir dire, the introduction into  
27 evidence, argument, or instructions to the jury.

28 **"§ 1D-40. Bifurcated trial.**

29            Upon the motion of a defendant, the issues of liability for compensatory damages and  
30 the amount of compensatory damages, if any, shall be tried separately from the issues of  
31 liability for punitive damages and the amount of punitive damages, if any. Evidence  
32 relating solely to punitive damages shall not be admissible until the trier of fact has  
33 determined that the defendant is liable for compensatory damages and has determined the  
34 amount of compensatory damages. The same trier of fact that tried the issues relating to  
35 compensatory damages shall try the issues relating to punitive damages.

36 **"§ 1D-45. Punitive damages awards.**

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

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

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

42            a. Reprehensibility of the defendant's motives;

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

- 1           c.     Degree of the defendant's awareness of the likelihood of serious  
2                 harm;  
3           d.     Duration of the defendant's misconduct; and  
4           e.     Actual damages suffered by the claimant.

5           (3)    Shall not consider evidence regarding the defendant's net worth, gross  
6                 or net revenues, or any other indicia of wealth or ability to pay.

7           (4)    Shall not be informed that the State may receive a portion of an award  
8                 of punitive damages.

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

15           (c)    The provisions of this Chapter shall not create any rights for the State. The  
16                Attorney General shall not assert the rights of the General Fund in any administrative or  
17                judicial proceeding for purposes of enforcing any claim against the General Fund for  
18                punitive damages pursuant to this section.

19    **"§ 1D-50. Jury instructions.**

20           In a jury trial, the court shall instruct the jury with regard to subdivisions (1) and  
21           (2) of of G.S. 1D-45(a).

22    **"§ 1D-55. Judicial review of award.**

23           When reviewing the evidence regarding a finding by the trier of fact concerning  
24           liability for punitive damages in accordance with G.S. 1D-15(a), or regarding the amount  
25           of punitive damages awarded, a trial or appellate court shall state in a written opinion its  
26           reasons for upholding or disturbing the finding or award. In doing so, the court shall  
27           address with specificity the evidence, or lack thereof, as it bears on the liability for or the  
28           amount of punitive damages, in light of the requirements of this Chapter."

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

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

- 31           (1)    Expenses for care, treatment and hospitalization incident to the injury  
32                 resulting in death;  
33           (2)    Compensation for pain and suffering of the decedent;  
34           (3)    The reasonable funeral expenses of the decedent;  
35           (4)    The present monetary value of the decedent to the persons entitled to  
36                 receive the damages recovered, including but not limited to  
37                 compensation for the loss of the reasonable expected;  
38                 a.    Net income of the decedent,  
39                 b.    Services, protection, care and assistance of the decedent, whether  
40                 voluntary or obligatory, to the persons entitled to the damages  
41                 recovered,

- 1                   c.     Society, companionship, comfort, guidance, kindly offices and  
2                    advice of the decedent to the persons entitled to the damages  
3                    recovered.
- 4           (5)     Such punitive damages as the decedent could have recovered pursuant  
5            to G.S. 1D-45 had he survived, and punitive damages for wrongfully  
6            causing the death of the decedent through ~~maliciousness, wilful or wanton~~  
7            ~~injury, or gross negligence;~~ malice or willful conduct, as defined in G.S.  
8            1D-5;
- 9           (6)     Nominal damages when the jury so finds."
- 10           Sec. 3. This act becomes effective October 1, 1995, and applies to any civil  
11           actions arising on or after that date.