

SENATE BILL 836

D3

7lr3041

By: **Senators Norman and Smith**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions – Punitive Damage Awards**

3 FOR the purpose of providing that punitive damages may be awarded in a civil action only
4 if the plaintiff proves by clear and convincing evidence that the defendant acted with
5 wantonness, fraud, or malice; requiring a trier of fact to consider a defendant's
6 liability for punitive damages concurrently with certain other issues; requiring a
7 trier of fact to determine the amount of punitive damages to be awarded based on
8 certain factors under certain circumstances; providing that punitive damages may
9 be awarded only in a jury trial under certain circumstances; requiring the rules of
10 civil procedure to be liberally construed for a certain purpose; defining certain terms;
11 providing for the application of this Act; making certain technical and stylistic
12 changes; and generally relating to punitive damage awards.

13 BY repealing and reenacting, with amendments,
14 Article – Courts and Judicial Proceedings
15 Section 10–913
16 Annotated Code of Maryland
17 (2013 Replacement Volume and 2016 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
19 That the Laws of Maryland read as follows:

20 **Article – Courts and Judicial Proceedings**

21 10–913.

22 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
23 INDICATED.

24 (2) “MALICE” MEANS INTENTIONAL CONDUCT, WITHOUT JUST CAUSE

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 OR EXCUSE, THAT IS CARRIED OUT:

2 (I) WITH INTENT TO INJURE THE PERSON OR PROPERTY OF
3 ANOTHER;

4 (II) WITH A WANT OF CARE THAT RAISES A PRESUMPTION OF
5 CONSCIOUS INDIFFERENCE TO THE LIKELY CONSEQUENCES OF THE CONDUCT; OR

6 (III) UNDER CIRCUMSTANCES THAT IMPLY EVIL MOTIVE OR
7 INTENT.

8 (3) "WANTONNESS" MEANS CONDUCT THAT IS CARRIED OUT WITH A
9 RECKLESS INDIFFERENCE FOR THE RIGHTS AND SAFETY OF OTHERS.

10 (B) PUNITIVE DAMAGES MAY BE AWARDED IN A CIVIL ACTION ONLY IF THE
11 PLAINTIFF PROVES BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT
12 ACTED WITH WANTONNESS, FRAUD, OR MALICE.

13 (C) (1) THE TRIER OF FACT SHALL CONSIDER A DEFENDANT'S LIABILITY
14 FOR PUNITIVE DAMAGES CONCURRENTLY WITH ALL OTHER ISSUES PRESENTED IN
15 THE ACTION.

16 (2) IF THE TRIER OF FACT DETERMINES THAT PUNITIVE DAMAGES
17 ARE SUPPORTABLE UNDER THE FACTS, THE TRIER OF FACT SHALL DETERMINE THE
18 AMOUNT OF PUNITIVE DAMAGES TO BE AWARDED BASED ON:

19 (I) THE LIKELIHOOD, AT THE TIME OF THE ALLEGED
20 MISCONDUCT, THAT SERIOUS HARM WOULD ARISE FROM THE DEFENDANT'S
21 MISCONDUCT;

22 (II) THE DEGREE OF THE DEFENDANT'S AWARENESS THAT
23 SERIOUS HARM WOULD BE LIKELY TO ARISE FROM THE DEFENDANT'S MISCONDUCT;

24 (III) THE PROFITABILITY OF THE MISCONDUCT TO THE
25 DEFENDANT;

26 (IV) THE DURATION OF THE MISCONDUCT AND ANY
27 CONCEALMENT OF THE MISCONDUCT BY THE DEFENDANT;

28 (V) THE ATTITUDE AND CONDUCT OF THE DEFENDANT ON
29 DISCOVERY OF THE MISCONDUCT; AND

30 (VI) SUBJECT TO SUBSECTION (D) OF THIS SECTION, THE

1 **DEFENDANT'S FINANCIAL MEANS.**

2 **(3) IN A JURY TRIAL, PUNITIVE DAMAGES MAY BE AWARDED ONLY IF**
3 **THE JURY REACHES A UNANIMOUS DECISION REGARDING THE DEFENDANT'S**
4 **LIABILITY FOR PUNITIVE DAMAGES AND THE AMOUNT OF PUNITIVE DAMAGES TO BE**
5 **AWARDED.**

6 **[(a)] (D)** In any action for punitive damages [for personal injury], evidence of the
7 defendant's financial means is not admissible until there has been a finding of liability and
8 that punitive damages are supportable under the facts.

9 **(E) THE RULES OF CIVIL PROCEDURE SHALL BE LIBERALLY CONSTRUED TO**
10 **ALLOW A PLAINTIFF DISCOVERY OF ANY INFORMATION OR MATERIAL REASONABLY**
11 **CALCULATED TO LEAD TO ADMISSIBLE EVIDENCE ON THE ISSUE OF PUNITIVE**
12 **DAMAGES.**

13 **[(b)] (F)** A claim filed with the Health Care Alternative Dispute Resolution
14 Office in accordance with § 3-2A-04 of this article shall be considered [an] A CIVIL action
15 for purposes of this section.

16 **SECTION 2. AND BE IT FURTHER ENACTED,** That this Act shall be construed to
17 apply only prospectively and may not be applied or interpreted to have any effect on or
18 application to any action for punitive damages filed before the effective date of this Act.

19 **SECTION 3. AND BE IT FURTHER ENACTED,** That this Act shall take effect
20 October 1, 2017.