

# HOUSE BILL NO. 689

## 99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MATHEWS.

1518H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 510.263 and 537.675, RSMo, and to enact in lieu thereof three new sections relating to punitive damages.

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

Section A. Sections 510.263 and 537.675, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 510.262, 510.263, and 537.675, to read as follows:

**510.262. 1. In any action seeking recovery of punitive or exemplary damages, the claimant shall prove by clear and convincing evidence that the party against whom the claim for punitive or exemplary damages is asserted intentionally acted either by a wanton, willful, malicious, or outrageous act, or with reckless disregard or complete indifference to the probable consequences of the act from which an evil motive is inferred.**

**2. In all civil actions in which punitive or exemplary damages are permitted, no petition or other pleading shall be filed containing a prayer for relief seeking such damages unless the court enters an order allowing an amended pleading that includes a claim for punitive or exemplary damages to be filed. The court may allow the filing of an amended pleading claiming such damages on a motion by the party seeking the amended pleading and on the basis of the supporting and opposing affidavits, supporting documentation, and evidence adduced establishing that there is a probability that the claimant will prevail on the claim for punitive or exemplary damages.**

**3. A motion for leave to file an amended pleading to include a claim for punitive or exemplary damages under subsection 2 of this section shall be filed on or before the date of the final pretrial conference held on the matter.**

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. In no case shall punitive or exemplary damages be assessed in accordance with**  
18 **this section against:**

19           **(1) A principal or employer for the acts of an agent or employee unless the**  
20 **principal or employer actively and knowingly participated in such conduct or the**  
21 **questioned conduct was knowingly condoned, authorized, or ratified by a person expressly**  
22 **empowered to do so on behalf of the principal or employer; or**

23           **(2) An association, partnership, or corporation for the acts of a member, partner,**  
24 **or shareholder unless such association, partnership, or corporation knowingly condoned,**  
25 **authorized, or ratified the questioned conduct.**

          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 compensatory damages, the amount of  
6 compensatory damages, including nominal damages, and the liability of a defendant for punitive  
7 damages. Evidence of defendant's financial condition shall not be admissible in the first stage  
8 of such trial unless admissible for a proper purpose other than the amount of punitive damages.

9           3. If during the first stage of a bifurcated trial the jury determines that a defendant is  
10 liable for punitive damages, [~~that jury~~] **then, after a final judgment has been entered from the**  
11 **first stage of such trial, the attorney general shall [~~determine,~~] have the sole authority to**  
12 **prosecute in the name of the plaintiff in a second stage of trial before another jury, the**  
13 **amount of punitive damages to be awarded against the defendant. In the second stage of the**  
14 **bifurcated trial, the only issue for determination shall be the amount of punitive damages**  
15 **that will serve to punish the defendant for the conduct for which the defendant has been**  
16 **found liable for punitive damages and will serve to deter the defendant and others from**  
17 **like conduct.** Evidence of such defendant's net worth shall be admissible during the second state  
18 of such trial. **In exercising the authority granted in this section, the attorney general shall**  
19 **not hire or utilize outside legal counsel, except in the case of a demonstrated conflict of**  
20 **interest. In such cases, outside legal counsel may be retained only on the basis of a**  
21 **reasonable hourly fee arrangement and shall not be retained on the basis of a contingency**  
22 **fee.**

23           4. **If a jury determines that a defendant is liable for punitive damages in accordance**  
24 **with subsection 3 of this section, the clerk of the circuit court shall give notice of the**  
25 **judgment or decree to the attorney general no more than fourteen days after the judgment**  
26 **or decree has been filed.**

27           **5.** Within the time for filing a motion for new trial, a defendant may file a [~~post-trial~~]  
28 **posttrial** motion requesting the amount awarded by the jury as punitive damages be credited by  
29 the court with amounts previously paid by the defendant for punitive damages arising out of the  
30 same conduct on which the imposition of punitive damages is based. At any hearing, the burden  
31 on all issues relating to such a credit shall be on the defendant and either party may introduce  
32 relevant evidence on such motion. Such a motion shall be determined by the trial court within  
33 the time and according to procedures applicable to motions for new trial. If the trial court  
34 sustains such a motion the trial court shall credit the jury award of punitive damages by the  
35 amount found by the trial court to have been previously paid by the defendant arising out of the  
36 same conduct and enter judgment accordingly. If the defendant fails to establish entitlement to  
37 a credit under the provisions of this section, or the trial court finds from the evidence that the  
38 defendant's conduct out of which the prior punitive damages award arose was not the same  
39 conduct on which the imposition of punitive damages is based in the pending action, or the trial  
40 court finds the defendant unreasonably continued the conduct after acquiring actual knowledge  
41 of the dangerous nature of such conduct, the trial court shall disallow such credit, or, if the trial  
42 court finds that the laws regarding punitive damages in the state in which the prior award of  
43 punitive damages was entered substantially and materially deviate from the law of the state of  
44 Missouri and that the nature of such deviation provides good cause for disallowance of the credit  
45 based on the public policy of Missouri, then the trial court may disallow all or any part of the  
46 credit provided by this section.

47           ~~[5-]~~ **6.** The credit allowable under this section shall not apply to causes of action for libel,  
48 slander, assault, battery, false imprisonment, criminal conversation, malicious prosecution or  
49 fraud.

50           ~~[6-]~~ **7.** The doctrines of remittitur and additur, based on the trial judge's assessment of  
51 the totality of the surrounding circumstances, shall apply to punitive damage awards.

52           ~~[7-]~~ **8.** As used in this section, "punitive damage award" means an award for punitive or  
53 exemplary damages or an award for aggravating circumstances.

54           ~~[8-]~~ **9.** Discovery as to a defendant's assets shall be allowed only after a finding by the  
55 trial court that it is more likely than not that the plaintiff will be able to present a submissible  
56 case to the trier of fact on the plaintiff's claim of punitive damages.

57           **10. Any punitive damages award shall be distributed as established under section**  
58 **537.675.**

537.675. 1. As used in sections 537.675 through 537.693, the following terms mean:

- 2           (1) "Annual claims", that period of time commencing on the first day of January of every  
3 year after December 31, 2002, and ending on the last day of that calendar year;
- 4           (2) "Commission", the labor and industrial relations commission;

5 (3) "Division", the division of workers' compensation;

6 (4) "Punitive damage final judgment", an award for punitive damages excluding interest  
7 that is no longer subject to review by courts of this state or of the United States;

8 (5) "Uncompensated tort victim", a person who:

9 (a) Is a party in a personal injury or wrongful death lawsuit; or is a tort victim whose  
10 claim against the tort-feasor has been settled for the policy limits of insurance covering the  
11 liability of such tort-feasor and such policy limits are inadequate in light of the nature and extent  
12 of damages due to the personal injury or wrongful death;

13 (b) Unless described in paragraph (a) of this subdivision:

14 a. Has obtained a final monetary judgment in that lawsuit described in paragraph (a) of  
15 this subdivision against a tort-feasor for personal injuries, or wrongful death in a case in which  
16 all appeals are final;

17 b. Has exercised due diligence in enforcing the judgment; and

18 c. Has not collected the full amount of the judgment;

19 (c) Is not a corporation, company, partnership or other incorporated or unincorporated  
20 commercial entity;

21 (d) Is not any entity claiming a right of subrogation;

22 (e) Was not on house arrest and was not confined in any federal, state, regional, county  
23 or municipal jail, prison or other correctional facility at the time he or she sustained injury from  
24 the tort-feasor;

25 (f) Has not pleaded guilty to or been found guilty of two or more felonies, where such  
26 two or more felonies occurred within ten years of the occurrence of the tort in question, and  
27 where either of such felonies involved a controlled substance or an act of violence; and

28 (g) Is a resident of the state of Missouri or sustained personal injury or death by a tort  
29 which occurred in the state of Missouri.

30 2. There is created the "Tort Victims' Compensation Fund". Unexpended moneys in the  
31 fund shall not lapse at the end of the biennium as provided in section 33.080.

32 3. ~~[Any party receiving a judgment final for purposes of appeal for punitive damages in~~  
33 ~~any case filed in any division of any circuit court of the state of Missouri shall notify the attorney~~  
34 ~~general of the state of Missouri of such award, except for actions claiming improper health care~~  
35 ~~pursuant to chapter 538.]~~ The state of Missouri shall have a lien for deposit into the tort victims'  
36 compensation fund to the extent of ~~[fifty]~~ **eighty-five** percent of the punitive damage final  
37 judgment ~~[which shall attach in any such case after deducting attorney's fees and expenses]~~ ;  
38 **except that, the attorney general may petition the court that presided over the trial in**  
39 **which punitive damages were awarded for costs and expenses, which shall be granted from**  
40 **the state's share of the award for punitive damages so long as no less than fifty percent of**

41 **the punitive damage final judgment is deposited into the tort victims' compensation fund.**

42 In each case, the attorney general shall serve a lien notice by certified mail or registered mail  
43 upon the party or parties against whom the state has a claim for collection of its share of a  
44 punitive damage final judgment. On a petition filed by the state, the court, on written notice to  
45 all interested parties, shall adjudicate the rights of the parties and enforce the lien. The lien shall  
46 not be satisfied out of any recovery until the attorney's claim for fees and expenses is paid. The  
47 state can file its lien in all cases where punitive damages are awarded upon the entry of the  
48 judgment final for purposes of appeal. The state cannot enforce its lien until there is a punitive  
49 damage final judgment. Cases resolved by arbitration, mediation or compromise settlement prior  
50 to a punitive damage final judgment are exempt from the provisions of this section. Nothing in  
51 this section shall hinder or in any way affect the right or ability of the parties to any claim or  
52 lawsuit to compromise or settle such claim or litigation on any terms and at any time the parties  
53 desire.

54 4. **Except as provided in section 510.263,** the state of Missouri shall have no interest  
55 in or right to intervene at any stage of any judicial proceeding pursuant to this section, except to  
56 enforce its lien rights as provided in subsection 3 of this section.

57 5. Twenty-six percent of all payments deposited into the tort victims' compensation fund  
58 and all interest accruing on the principal regardless of source or designation shall be transferred  
59 to the basic civil legal services fund established in section 477.650. Moneys in the tort victims'  
60 compensation fund shall not be used to pay any portion of a refund mandated by article X,  
61 section 18 of the constitution.

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