

FIRST REGULAR SESSION

# HOUSE BILL NO. 1357

## 98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORLEW.

2653H.02I

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

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Section A. Sections 510.263 and 537.675, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 510.263 and 537.675, to read as follows:

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

2. In the first stage of a bifurcated trial, in which the issue of punitive damages is submissible, the jury shall determine liability for compensatory damages, the amount of compensatory damages, including nominal damages, and the liability of a defendant for punitive damages. Evidence of defendant's financial condition shall not be admissible in the first stage of such trial unless admissible for a proper purpose other than the amount of punitive damages.

3. If during the first stage of a bifurcated trial the jury determines that a defendant is liable for punitive damages, [that jury] **then the attorney general through his or her staff attorneys shall [determine ,] have the sole jurisdiction to prosecute** in a second stage of trial **before another jury**, the amount of punitive damages to be awarded against such defendant. **The amount of punitive damages shall be the only issue the attorney general shall have jurisdiction to prosecute during the second stage of trial.** Evidence of such defendant's net worth shall be admissible during the second stage of such trial.

4. Within the time for filing a motion for new trial, a defendant may file a [post-trial] **posttrial** motion requesting the amount awarded by the jury as punitive damages be credited by

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.

18 the court with amounts previously paid by the defendant for punitive damages arising out of the  
19 same conduct on which the imposition of punitive damages is based. At any hearing, the burden  
20 on all issues relating to such a credit shall be on the defendant and either party may introduce  
21 relevant evidence on such motion. Such a motion shall be determined by the trial court within  
22 the time and according to procedures applicable to motions for new trial. If the trial court  
23 sustains such a motion the trial court shall credit the jury award of punitive damages by the  
24 amount found by the trial court to have been previously paid by the defendant arising out of the  
25 same conduct and enter judgment accordingly. If the defendant fails to establish entitlement to  
26 a credit under the provisions of this section, or the trial court finds from the evidence that the  
27 defendant's conduct out of which the prior punitive damages award arose was not the same  
28 conduct on which the imposition of punitive damages is based in the pending action, or the trial  
29 court finds the defendant unreasonably continued the conduct after acquiring actual knowledge  
30 of the dangerous nature of such conduct, the trial court shall disallow such credit, or, if the trial  
31 court finds that the laws regarding punitive damages in the state in which the prior award of  
32 punitive damages was entered substantially and materially deviate from the law of the state of  
33 Missouri and that the nature of such deviation provides good cause for disallowance of the credit  
34 based on the public policy of Missouri, then the trial court may disallow all or any part of the  
35 credit provided by this section.

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

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

41 7. As used in this section, "punitive damage award" means an award for punitive or  
42 exemplary damages or an award for aggravating circumstances.

43 8. Discovery as to a defendant's assets shall be allowed only after a finding by the trial  
44 court that it is more likely than not that the plaintiff will be able to present a submissible case to  
45 the trier of fact on the plaintiff's claim of punitive damages.

46 **9. Any punitive damages award shall be collected and deposited into the tort**  
47 **victims' compensation fund established under section 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 percent of] **for the amount of** the punitive damage final  
37 judgment [which shall attach in any such case after deducting attorney's fees and expenses]. In  
38 each case, the attorney general shall serve a lien notice by certified mail or registered mail upon  
39 the party or parties against whom the state has a claim for collection of its share of a punitive  
40 damage final judgment. On a petition filed by the state, the court, on written notice to all  
41 interested parties, shall adjudicate the rights of the parties and enforce the lien. The lien shall

42 not be satisfied out of any recovery until the attorney's claim for fees and expenses is paid. The  
43 state can file its lien in all cases where punitive damages are awarded upon the entry of the  
44 judgment final for purposes of appeal. The state cannot enforce its lien until there is a punitive  
45 damage final judgment. Cases resolved by arbitration, mediation or compromise settlement prior  
46 to a punitive damage final judgment are exempt from the provisions of this section. Nothing in  
47 this section shall hinder or in any way affect the right or ability of the parties to any claim or  
48 lawsuit to compromise or settle such claim or litigation on any terms and at any time the parties  
49 desire.

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

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

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