

HB 2458 -- PUNITIVE DAMAGES

SPONSOR: Mathews

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Civil and Criminal Proceedings by a vote of 6 to 3. Voted "Do Pass" by the Select Committee on Judiciary by a vote of 6 to 1.

This bill specifies that in any action seeking recovery of punitive or exemplary damages, the claimant must 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.

In all civil actions in which punitive or exemplary damages are permitted, no petition or other pleading can 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 is authorized to 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.

A motion for leave to file an amended pleading to include a claim for punitive or exemplary damages under these provisions must be filed on or before the date of the final pretrial conference held on the matter.

The bill prohibits punitive or exemplary damages from being assessed in certain specified situations.

The bill gives the Office of the Attorney General sole jurisdiction to prosecute in the name of the plaintiff the punitive damages phase of a trial as a separate case in front of a new jury. All monies collected from this stage will be deposited into the Missouri Tort Victims Compensation Fund, however the victim is eligible to receive up to 50% of the monies. The office may petition the court for costs and expenses provided that no less than 50% of the award is deposited in the Tort Victims Compensation Fund.

The bill prohibits the office from hiring outside legal counsel, except in a case of demonstrable conflicts of interest and requires

the outside counsel to only be paid a reasonable hourly rate for work completed.

If a jury determines that a defendant is liable for punitive damages, the clerk of court must give notice of the judgment or decree to the Attorney General no more than 14 days after the judgment or decree has been filed.

This bill is similar to HCS HB 1357 (2015).

PROPOSERS: Supporters say that this bill deals with punitive damages, which are awarded when a person has acted with a complete indifference to the consequences of their bad behavior. This bill does not impact compensatory damages in any way. The idea is not to slow the process down. Punitive damages should be placed in the hands of the Attorney General, as it is the Attorney General's job to protect the citizens of the state.

Testifying for the bill were Representative Mathews; Associated Industries of Missouri; Missouri Chamber of Commerce and Industry; State Farm Insurance Companies; and David P. Stoeberl, Carmody Macdonald PC.

OPPONENTS: Those who oppose the bill say that punitive damages in Missouri is a derivative claim and you can't have a punitive award without an underlying award for damages. What this would in essence do is hold a trial before the real trial is ever held. This bill will prevent plaintiff's from engaging in discovery regarding their claim.

Testifying against the bill was Missouri Association of Trial Attorneys.