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HOUSE BILL 729

Committee Substitute Favorable 4/26/95

Senate Judiciary I/Constitution Committee Substitute Adopted 7/26/95

Short Title: Punitive Damages in Civil Actions.

(Public)

Sponsors:

Referred to:

April 3, 1995

A BILL TO BE ENTITLED  
AN ACT TO ESTABLISH STANDARDS AND PROCEDURES FOR THE  
RECOVERY OF PUNITIVE DAMAGES IN CIVIL ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

**"CHAPTER 1D.**

**"PUNITIVE DAMAGES.**

**"§ 1D-1. Purpose of punitive damages.**

Punitive damages may be awarded, in an appropriate case and subject to the provisions of this Chapter, to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts.

**"§ 1D-5. Definitions.**

As used in this Chapter:

- (1) 'Claimant' means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of punitive damages. In a claim for relief in which a party seeks recovery of punitive damages related to injury to another person, damage to the property of another

1 person, death of another person, or other harm to another person,  
2 'claimant' includes any party seeking recovery of punitive damages.

3 (2) 'Compensatory damages' includes nominal damages.

4 (3) '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 (4) 'Fraud' does not include constructive fraud unless an element of intent is  
8 present.

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

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

14 (7) 'Willful or wanton conduct' means the conscious and intentional  
15 disregard of and indifference to the rights and safety of others, which  
16 the defendant knows or should know is reasonably likely to result in  
17 injury, damage, or other harm. 'Willful or wanton conduct' means more  
18 than gross negligence.

19 **"§ 1D-10. Scope of the Chapter.**

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

24 **"§ 1D-15. Standards for recovery of punitive damages.**

25 (a) Punitive damages may be awarded only if the claimant proves that the  
26 defendant is liable for compensatory damages and that one of the following aggravating  
27 factors was present:

28 (1) Fraud.

29 (2) Malice.

30 (3) Willful or wanton conduct.

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

33 (c) Punitive damages shall not be awarded against a person solely on the basis of  
34 vicarious liability for the acts or omissions of another. Punitive damages may be  
35 awarded against a person only if that person participated in the conduct constituting the  
36 aggravating factor giving rise to the punitive damages, or if, in the case of a corporation,  
37 the officers, directors, or managers of the corporation participated in or condoned the  
38 conduct constituting the aggravating factor giving rise to punitive damages.

39 (d) Punitive damages shall not be awarded against a person solely for breach of  
40 contract.

41 **"§ 1D-20. Election of extracompensatory remedies.**

42 A claimant must elect, prior to judgment, between punitive damages and any other  
43 remedy pursuant to another statute that provides for multiple damages.

**"§ 1D-25. Limitation of amount of recovery.**

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

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

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

**"§ 1D-30. Bifurcated trial.**

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

**"§ 1D-35. Punitive damages awards.**

In determining the amount of punitive damages, if any, to be awarded, the trier of fact:

- (1) Shall consider the purposes of punitive damages set forth in G.S. 1D-1; and
- (2) May consider only that evidence that relates to the following:
  - a. The reprehensibility of the defendant's motives and conduct.
  - b. The likelihood, at the relevant time, of serious harm.
  - c. The degree of the defendant's awareness of the probable consequences of its conduct.
  - d. The duration of the defendant's conduct.
  - e. The actual damages suffered by the claimant.
  - f. Any concealment by the defendant of the facts or consequences of its conduct.
  - g. The existence and frequency of any similar past conduct by the defendant.
  - h. Whether the defendant profited from the conduct.
  - i. The defendant's ability to pay punitive damages, as evidenced by its revenues or net worth.

**"§ 1D-40. Jury instructions.**

In a jury trial, the court shall instruct the jury with regard to subdivisions (1) and (2) of G.S. 1D-35.

**"§ 1D-45. Frivolous or malicious actions; attorneys' fees.**

1        The court shall award reasonable attorneys' fees, resulting from the defense against  
2 the punitive damages claim, against a claimant who files a claim for punitive damages  
3 that the claimant knows or should have known to be frivolous or malicious. The court  
4 shall award reasonable attorney fees against a defendant who asserts a defense in a  
5 punitive damages claim that the defendant knows or should have known to be frivolous  
6 or malicious.

7 **"§ 1D-50. Judicial review of award.**

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

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

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

- 16        (1) Expenses for care, treatment and hospitalization incident to the injury  
17        resulting in death;
- 18        (2) Compensation for pain and suffering of the decedent;
- 19        (3) The reasonable funeral expenses of the decedent;
- 20        (4) The present monetary value of the decedent to the persons entitled to  
21        receive the damages recovered, including but not limited to  
22        compensation for the loss of the reasonable expected;
- 23        a. Net income of the decedent,
- 24        b. Services, protection, care and assistance of the decedent, whether  
25        voluntary or obligatory, to the persons entitled to the damages  
26        recovered,
- 27        c. Society, companionship, comfort, guidance, kindly offices and  
28        advice of the decedent to the persons entitled to the damages  
29        recovered.
- 30        (5) Such punitive damages as the decedent could have recovered pursuant  
31 to Chapter 1D of the General Statutes had he survived, and punitive  
32 damages for wrongfully causing the death of the decedent through  
33 ~~maliciousness, wilful or wanton injury, or gross negligence;~~ malice or willful  
34 or wanton conduct, as defined in G.S. 1D-5;
- 35        (6) Nominal damages when the jury so finds."

36        Sec. 3. G.S. 1A-1, Rule (9), as amended by Section 2 of Chapter 309 of the  
37 1995 Session Laws, is amended by adding a new subsection to read as follows:

38        "(k) Punitive damages. – A demand for punitive damages shall be specifically  
39 stated, except for the amount, and the aggravating factor that supports the award of  
40 punitive damages shall be averred with particularity. The amount of damages shall be  
41 pled in accordance with Rule 8."

42        Sec. 4. The provisions of this act are severable. If any portion of this act is  
43 declared unconstitutional or the application of this act to any person or circumstances is

1 held invalid, the remaining portions and their applicability to any person or circumstances  
2 are valid.

3           Sec. 5. This act becomes effective January 1, 1996, and applies to claims for  
4 relief arising on or after that date.