

**Senate Bill No. 402**

(By Senators Nohe, Hall, K. Facemyer, Barnes and Boley)

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[Introduced February 3, 2011; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]  
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A BILL to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §55-2B-1, §55-2B-2,  
§55-2B-3, §55-2B-4, §55-2B-5, §55-2B-6, §55-2B-7, §55-2B-8 and  
§55-2B-9, all relating to punitive damages in civil actions.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended  
by adding thereto a new article, designated §55-2B-1, §55-2B-2,  
§55-2B-3, §55-2B-4, §55-2B-5, §55-2B-6, §55-2B-7, §55-2B-8 and §55-  
2B-9, all to read as follows:

**ARTICLE 2B. PUNITIVE DAMAGES IN CIVIL ACTIONS.**

**§55-2B-1. Punitive damages.**

(a) Punitive damages are permitted in a civil action against  
a defendant only if the plaintiff establishes by clear and  
convincing evidence that the damages suffered were the result of  
conduct that was carried out by the defendant with actual malice  
toward the plaintiff or with a conscious, reckless and outrageous  
indifference to the health, safety, and welfare of others.

(b) Punitive damages may not be awarded in the following

1 situations:

2 (1) The underlying lawsuit is a breach of contract claim or an  
3 action other than a civil action seeking money for damages; or

4 (2) No compensatory damages have been awarded against a  
5 defendant to the plaintiff for the same course of conduct of the  
6 defendant.

7 (c) A defendant may not be held liable for punitive damages  
8 unless the trier of fact finds that plaintiff's award of  
9 compensatory damages alone is insufficient to punish the defendant  
10 for the conduct and to deter the defendant from like conduct in the  
11 future.

12 **§55-2B-2. Proportional awards.**

13 (a) The amount of punitive damages that may be awarded for a  
14 claim in a civil action may not exceed the greater of three times  
15 the amount of compensatory damages or \$250,000 where the punitive  
16 damages are recoverable from large employers.

17 (b) The amount of punitive damages that may be awarded for a  
18 claim in a civil action may not exceed the lesser of three times  
19 compensatory damages or \$100,000 where punitive damages are  
20 recoverable from a defendant which is not a large employer.

21 (c) The above provisions of this code section, paragraphs (a)  
22 and (b), must be applied by the trial court and may not be  
23 disclosed to the jury. If a jury returns a verdict for punitive  
24 damages against the defendant that exceeds these amounts, the trial  
25 court shall reduce the award so that it will not exceed the  
26 applicable amount set forth in this section.

27 (d) As used in this code section, "large employer" means an

1 employer who employs more than twenty-five persons on a full-time  
2 permanent basis, or its equivalent, or has annual revenues of more  
3 than five million dollars.

4 **§55-2B-3. Multiple awards.**

5 (a) No punitive damages may be awarded against a defendant if:

6 (1) Prior punitive damages awards were obtained by the same or  
7 other plaintiffs in any state or federal court against the same  
8 defendant for the same course of conduct as alleged in the present  
9 civil action; and

10 (2) Such punitive damages award exceeds the applicable amount  
11 set forth in section two of this article.

12 (b) If the total amount of any such prior punitive damages  
13 awards is less than the applicable amount set forth in section two  
14 of this article, then the amount of any punitive damages awarded in  
15 the present case shall be reduced, if necessary, so that the  
16 combined total amount of punitive damages awarded in the present  
17 and all prior actions involving the same conduct and the same  
18 defendant do not exceed the applicable amount set forth in section  
19 two of this article.

20 (c) The provisions of this code section must be applied by the  
21 trial court and may not be admissible as evidence before or  
22 otherwise offered for consideration by the jury.

23 **§55-2B-4. Bifurcation.**

24 (a) In a civil action in which punitive damages are sought,  
25 the court shall bifurcate the trial of the action if requested by  
26 the defendant.

27 (b) Where bifurcated proceedings are requested, the trial

1 court must follow the following procedures:

2       (1) *First stage* -- In the first stage of a bifurcated trial,  
3 the trier of fact shall determine liability for compensatory  
4 damages and the amount of compensatory damages. Evidence relevant  
5 only to the claim of punitive damages shall be inadmissible in the  
6 first stage of the trial. If the trier of fact determines during  
7 this first stage that a defendant is liable for compensatory  
8 damages, the court must determine whether the evidence was  
9 sufficient to permit the jury to consider punitive damages.

10       (2) *Second stage* -- If the court determines the evidence to be  
11 sufficient for the jury to consider punitive damages, the same  
12 trier of fact should then determine whether defendant is liable for  
13 punitive damages and, if applicable, the amount of punitive  
14 damages.

15 **§55-2B-5. Sharing of punitive damage awards.**

16       (a) Since the purpose of punitive damages awards is to punish  
17 the defendant for certain conduct and to deter the defendant and  
18 others from engaging in such conduct in the future, the entire  
19 award should not be a windfall to the plaintiff and his or her  
20 attorney but should be shared by the public.

21       (b) The public's share of each such award shall be payable to  
22 the State of West Virginia to be distributed in equal shares to the  
23 crime victims' compensation fund established by the provisions of  
24 article two-a, chapter fourteen of this code, the Fire Protection  
25 Fund described in section thirty-three, article three, chapter  
26 thirty-three of this code, for the benefit of volunteer and part

1 volunteer fire departments established by the provisions of article  
2 fifteen, chapter eight of this code, the senior center and other  
3 senior programs and senior care services recognized or established  
4 by the provisions of article five-p, chapter sixteen of this code,  
5 the Breast and Cervical Cancer Diagnostic and Treatment Fund  
6 established by the provisions of section seven, article  
7 thirty-three, chapter sixteen of this code, family protection  
8 shelters and other domestic violence and child abuse programs and  
9 funds established by the provisions of article two-c, chapter  
10 forty-eight of this code, and the Drunk Driver Prevention Fund  
11 established by the provisions of section sixteen, article fifteen,  
12 chapter eleven of this code.

13       (c) The public's share of each punitive damages award as  
14 described in subsection (b) shall be seventy-five percent thereof  
15 after the deduction of reasonable expenses, other than attorney's  
16 fees, that are directly related to the obtaining of the punitive  
17 damages award.

18       (d) The state shall have no interest in or right to intervene  
19 at any stage of any judicial proceeding involving a claim for  
20 punitive damages.

21       (e) In the event the full amount of punitive damages awarded  
22 cannot be collected, the public, the plaintiff, and the plaintiff's  
23 attorneys if sharing therein, shall be entitled to a proportional  
24 share of the punitive damages collected.

25       (f) The fact that a share of punitive damages award is to be  
26 paid to the state for the public is not admissible as evidence at  
27 trial or otherwise be offered for consideration by the trier of

1 fact in determining the amount of punitive damages award.

2 (g) The plaintiff's attorney's share of a punitive damages  
3 award shall be no more than five percent of the plaintiff's share  
4 of a punitive damage award as approved by the court after the  
5 deduction of reasonable expenses, other than attorney's fees, that  
6 are directly related to the obtaining of the punitive damages  
7 award.

8 **§55-2B-6. Complicity rule.**

9 (a) A principal or employer who is a natural person may be  
10 liable for punitive damages as a result of conduct of his or her  
11 agent or employee only when the plaintiff proves by clear and  
12 convincing evidence that the damages suffered were the result of  
13 conduct that was carried out by such principal or employer with  
14 actual malice toward the plaintiff or with a conscious reckless and  
15 outrageous indifference to the health, safety, and welfare of  
16 others.

17 (b) A principal or employer that is other than a natural  
18 person may be liable for punitive damages as a result of the  
19 conduct of its agent or employee only when the plaintiff proves by  
20 clear and convincing evidence that the damages suffered were the  
21 result of conduct that was carried out by a senior manager of such  
22 principal or employer with actual malice toward the plaintiff or  
23 with conscious, reckless and outrageous indifference to the health,  
24 safety, and welfare of others.

25 (c) An association, limited liability company, or partnership  
26 may be liable for punitive damages as a result of the conduct of

1 its member or partner only if plaintiff proves by clear and  
2 convincing evidence that the damages suffered were the result of  
3 conduct that was carried out by a senior manager of such  
4 association, limited liability company or partnership with actual  
5 malice toward the plaintiff or with conscious, reckless and  
6 outrageous indifference to the health, safety, and welfare of  
7 others.

8 **§55-2B-7. Conflicting laws repealed.**

9 This article supersedes, invalidates, and repeals all other  
10 state laws that conflict with its provisions.

11 **§55-2B-8. Applicability.**

12 This article applies to all causes of action arising on or  
13 after the effective date of its enactment.

14 **§55-2B-9. Severability clause.**

15 The provisions of this article and all sections and  
16 subparagraphs thereof shall be severable from the provisions of  
17 each other subparagraph, paragraph, subdivision, subsection,  
18 section, article, or chapter of this code so that if any provision  
19 of this article be held void, the remaining provisions of this  
20 article and this code shall remain valid.

NOTE: The purpose of this bill is to limit the recovery of  
punitive damages in civil actions and to provide that some of the  
proceeds would go to benefit certain public programs.

This article is new; therefore, strike-throughs and  
underscoring have been omitted.