

1 As used in this article:

2 (1) "Civil action" means any noncriminal, civil action arising
3 in tort that seeks damages for injury or loss to person or
4 property, including civil actions involving claims based upon
5 defective products but not a civil action for damages for breach of
6 a commercial contract or agreement governed by article two, chapter
7 forty-six of this code.

8 (2) "Trier of fact" means the jury or, in a nonjury action,
9 the court.

10 **§53-9-2. Bifurcated trial.**

11 (a) In a civil action that is tried to a jury and in which a
12 plaintiff makes a claim for compensatory and punitive or exemplary
13 damages, upon motion of any party, the trial of the civil action
14 shall be bifurcated as follows:

15 (1) The initial stage of the trial shall be confined to the
16 presentation of evidence concerning and a determination by the jury
17 as to whether one or all of the defendants is civilly liable to the
18 plaintiff and, if so, whether the plaintiff is entitled to recover
19 from a defendant compensatory damages for any proven injury or loss
20 to person or property. During this initial stage, neither the
21 parties nor the court may advise, mention or otherwise imply to the
22 jury that a claim for punitive damages in addition to a claim for
23 compensatory damages is pending. Moreover, no party may present
24 and the court may not permit a party to present, evidence that

1 relates to the issue of whether plaintiff is entitled to recover
2 from a defendant or multiple defendants, punitive or exemplary
3 damages for the injury or loss to the person or property of the
4 plaintiff.

5 (2) Following the presentation of sufficient evidence with
6 respect to liability and compensatory damages to warrant submission
7 to the jury, the court shall instruct the jury to return, and the
8 jury shall return, a general verdict and, if that verdict is in
9 favor of the plaintiff, answers to special interrogatories that
10 specify the total compensatory damages recovered by the plaintiff
11 against each defendant.

12 (3) If the jury returns a verdict in favor of the plaintiff
13 against a defendant for compensatory damages for injury or loss to
14 person or property of the plaintiff, evidence and arguments may
15 then be presented to the jury in a second phase of the trial going
16 to whether, in addition to those compensatory damages, the actions
17 of the defendant or defendants upon which liability was predicated
18 were such as to warrant the awarding of punitive damages over and
19 above the compensatory damages previously awarded.

20 (b) In a civil action tried to a court and in which a
21 plaintiff makes a claim for compensatory and punitive or exemplary
22 damages:

23 (1) The court shall first make a determination with respect to
24 whether the plaintiff is entitled to recover compensatory damages

1 from a defendant for injury or loss to person or property. If the
2 court's determination is in favor of the plaintiff and against a
3 defendant, the court shall then make findings of fact that specify
4 the total compensatory damages recoverable by the plaintiff from
5 that defendant.

6 (2) After making a determination as to the total compensatory
7 damages the plaintiff is entitled to recover from a defendant, the
8 court shall then hear arguments and testimony regarding whether
9 punitive or exemplary damages over and above the compensatory
10 damages previously awarded are warranted. If it determines that
11 they are, the court shall enter a judgment with findings of fact
12 and conclusions of law supporting both the award of punitive or
13 exemplary damages and the amount of those damages.

14 **§53-9-3. When punitive damages may be awarded.**

15 (a) Punitive damages may be awarded:

16 (1) In a civil action where a plaintiff has been found to be
17 entitled to compensatory damages against a defendant, the trier of
18 fact shall determine the liability of a defendant for punitive or
19 exemplary damages and the amount of those damages.

20 (2) In a civil action if a plaintiff proves by clear and
21 convincing evidence that the acts or omissions of that defendant
22 demonstrate:

23 (A) Actual malice;

24 (B) Wanton, willful or reckless conduct;

1 (C) Vindictive or egregious misconduct;

2 (D) Criminal indifference to civil obligations affecting the
3 rights of others appear; or

4 (E) Where legislative enactment authorizes such damages.

5 (b) Where a wrongful act, done under a bona fide claim of
6 right, and without malice, punitive or exemplary damages are not
7 recoverable in a civil action.

8 **§53-9-4. Review of an award of punitive damages by a jury.**

9 (a) Before entering judgment for punitive or exemplary damages
10 based upon a jury verdict awarding those damages, the court shall
11 review the award and determine whether the amount of the punitive
12 damages award is justified by aggravating evidence including, but
13 not limited to:

14 (1) The reprehensibility of the defendant's conduct;

15 (2) Whether the defendant profited from the wrongful conduct;

16 (3) The financial position of the defendant;

17 (4) The appropriateness of punitive damages to encourage fair
18 and reasonable settlements when a clear wrong has been committed;
19 and

20 (5) The cost of litigation to the plaintiff.

21 (b) The court shall then consider whether a reduction of the
22 award is warranted based upon mitigating evidence including, but
23 not limited to:

24 (1) Whether the punitive damages awarded bear a reasonable

1 relationship to the harm that is likely to occur or has occurred in
2 West Virginia as a result of the defendant's conduct;

3 (2) Whether punitive damages bear a reasonable relationship to
4 compensatory damages awarded the plaintiff;

5 (3) The cost of litigation to the defendant;

6 (4) Any criminal sanctions imposed on the defendant for the
7 acts or omission upon which the award is based;

8 (5) Any other civil actions against the same defendant based
9 upon the same conduct;

10 (6) Relevant information that was not available to the jury
11 because it was unduly prejudicial to the defendant; and

12 (7) Additional relevant evidence.

13 (c) After conducting this review, the court shall, in
14 entering judgment, make specific findings of fact and conclusions
15 of law with respect to the determinations required under
16 subsections (a) and (b) of this section.

17 **§53-9-5. Limits on punitive damages.**

18 (a) A court may not enter a judgment for punitive or exemplary
19 damages that is in excess of three times the amount of the
20 compensatory damages, exclusive of attorney fees, awarded to the
21 plaintiff, exclusive of attorney fees, unless it enters an order
22 containing specific findings of fact and conclusions of law that
23 justify a larger award. In no case, however, may a court enter a
24 judgment for punitive or exemplary damages that would threaten the

1 continued economic viability of the defendant.

2 (b) In the event a court determines that an award of punitive
3 or exemplary damages in excess of three times the amount of the
4 compensatory damages awarded to the plaintiff from a defendant is
5 warranted under the facts and the law, all punitive or exemplary
6 damages in exceeding three times the amount of the compensatory
7 damages shall be paid to a special fund established by the West
8 Virginia Supreme Court of Appeals for the purpose of compensating
9 residents of West Virginia who have suffered physical or
10 psychiatric injuries to their person or damage to their property as
11 a result of crimes perpetrated in West Virginia and for which full
12 compensation for the injuries or damages have not been forthcoming
13 from the perpetrator of those crimes or any third party payor.

14 (c) An award of prejudgment interest may not include
15 prejudgment interest on punitive or exemplary damages.

16 (d) An award of punitive damages in a civil action may not be
17 be entered against a defendant if that defendant files with the
18 court a certified judgment, judgment entries or other evidence
19 showing that punitive or exemplary damages have already been
20 awarded and collected, in any state or federal court, against that
21 defendant based on the same act, course of conduct or omissions
22 that is alleged to have caused the injury or loss to person or
23 property.

24 (e) An award of punitive or exemplary damage may not be

1 entered in a case involving contractual claims arising out of
2 commercial transaction subject to article two, chapter forty-six of
3 this code, regardless of whether the claims are couched in contract
4 or tort, the remedies for the claims being limited to those
5 specifically provided for in that article.

6 **§53-9-6. Attorney fees.**

7 (a) Where a court awards punitive or exemplary damages to a
8 plaintiff, the court may, but need not, award attorney fees payable
9 by the defendant to the attorney or attorneys for the plaintiff
10 based upon the amount of the punitive or exemplary damages awarded.

11 (b) In making such an award, the court shall consider the fees
12 to which the attorneys for the plaintiff is entitled under any fee
13 or retention agreement, the amount of work performed by the
14 attorneys in developing the evidence presented supporting the award
15 of punitive or exemplary damages, and whether an award of
16 additional damages in the form of attorney fees would threaten the
17 continued economic viability of the defendant against whom such
18 damages are awarded.

19 (c) Where the court elects to award attorney fees predicated
20 upon entry of a judgment for punitive damages, it shall enter
21 findings of fact sufficient to allow a reviewing court to determine
22 the basis for and propriety of the award.

23 (d) In no event may the attorney fees based upon an award of
24 punitive or exemplary damages exceed fifteen percent of the total

1 amount of the punitive and exemplary damages awarded.

NOTE: The purpose of this bill is to create a system for the bifurcation for trial of claims for compensatory and exemplary damages. The bill provides when punitive or exemplary damages may be awarded and specifies maximum amounts.

This article is new; therefore, it has been completely underscored.