

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 320

FISCAL
NOTE

BY SENATOR TRUMP

[Introduced January 16, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §55-7-29 of the Code of West Virginia, 1931, as amended, relating
2 to punitive damage awards; payments of punitive damage awards; and payments of a
3 portion of punitive damage awards to the General Revenue Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-29. Limitations on punitive damages.

1 (a) An award of punitive damages may only occur in a civil action against a defendant if a
2 plaintiff establishes by clear and convincing evidence that the damages suffered were the result
3 of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a
4 conscious, reckless and outrageous indifference to the health, safety and welfare of others.

5 (b) Any civil action tried before a jury involving punitive damages may, upon request of
6 any defendant, be conducted in a bifurcated trial in accordance with the following guidelines:

7 (1) In the first stage of a bifurcated trial, the jury shall determine liability for compensatory
8 damages and the amount of compensatory damages, if any.

9 (2) If the jury finds during the first stage of a bifurcated trial that a defendant is liable for
10 compensatory damages, then the court shall determine whether sufficient evidence exists to
11 proceed with a consideration of punitive damages.

12 (3) If the court finds that sufficient evidence exists to proceed with a consideration of
13 punitive damages, the same jury shall determine if a defendant is liable for punitive damages in
14 the second stage of a bifurcated trial and may award such damages.

15 (4) If the jury returns an award for punitive damages that exceeds the amounts allowed
16 under subsection (c) of this section, the court shall reduce any such award to comply with the
17 limitations set forth therein.

18 (c) The amount of punitive damages that may be awarded in a civil action may not exceed
19 the greater of four times the amount of compensatory damages or \$500,000, whichever is greater.

20 (d) When any verdict includes a punitive damage award in a civil action, the party against

21 whom the judgment was entered shall notify the Attorney General of the punitive damage award.

22 (1) When a punitive damage award is paid, the party against whom the judgment was
23 entered shall pay the punitive damage award to the clerk of the court where the action is pending.

24 (2) Upon receiving the payment described in subsection (b), the clerk of the court shall:

25 (A) Pay the person to whom the punitive damages were awarded two-thirds of the total
26 punitive damage award, or to the persons to whom punitive damages were awarded two-thirds of
27 the total punitive damage award in equal amounts; and

28 (B) Pay the remaining one-third of the punitive damage award to the State Treasurer, who
29 shall deposit the funds into the state's General Revenue Fund.

30 (3) The Attorney General may negotiate and compromise the distribution of a punitive
31 damage payment described in paragraph (B), subdivision (2), subsection (e) of this section.

32 (4) The State of West Virginia's interest in a punitive damage award described in
33 paragraph (B), subdivision (2), subsection (e) of this section vests and is effective when a verdict
34 is announced that includes punitive damages; *Provided*, That the state shall have no interest in
35 or right to intervene at any stage of any judicial proceeding expect to enforce its rights to any
36 payment pursuant to paragraph (B), subdivision (2), subsection (e) of this section.

37 (e) An attorney shall not be entitled to collect any fees or expenses from punitive damages
38 awards paid to the State Treasurer pursuant to paragraph (B), subdivision (1), subsection (d) of
39 this section.

40 (f) The provisions of subsection (d) of this section are not admissible in any civil action,
41 and the court shall not advise or instruct the jury in any manner regarding allocation of punitive
42 damage award payments as provided therein.

NOTE: The purpose of this bill is to entitle the state to one-third of all punitive damages awarded in any court proceeding in this state to be deposited with the State Treasurer in the General Revenue Fund.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.