

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 421**

4 (By Senators Trump, Carmichael, Blair and Gaunch)

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6 [Originating in the Committee on the Judiciary;

7 reported February 13, 2015.]

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
12 designated §55-7-27, relating generally to treatment of punitive damages; providing for
13 limitations on punitive damages; providing for when punitive damages may be awarded;
14 providing for a bifurcated trial, upon request, for civil actions involving punitive damages;
15 providing that one third of all punitive damages awards in excess of \$500,000 made in the
16 state be tendered to the State Treasurer; providing that those remittances, less a percentage
17 to the circuit clerk for processing, be deposited into the Revenue Shortfall Reserve Fund; and
18 providing that those funds be administered according to section twenty, article two, chapter
19 eleven-b of this code.

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

21 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
22 section, designated §55-7-27, to read as follows:

1 **ARTICLE 7. ACTIONS FOR INJURIES.**

2 **§55-7-27. Limitations on punitive damages.**

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

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

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

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

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

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

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

22 (d) The Legislature hereby finds that:

1 (1) Punitive damages are a form of damages awarded to a plaintiff in a civil action which are
2 not compensatory in nature and which are intended solely for the punishment of defendants found
3 liable for certain bad acts.

4 (2) Punitive damages are a powerful incentive for certain plaintiffs, and plaintiffs' counsel,
5 to institute and prosecute civil actions against certain defendants, resulting in a valuable check on
6 the behavior of bad actors in the marketplace.

7 (3) Punitive damages, by their nature as noncompensatory damages, result in a windfall to
8 plaintiffs, and their counsel, which may be better applied to contribute to the fiscal stability of the
9 state.

10 (e) For any award of punitive damages in excess of \$500,000 in civil actions adjudicated in
11 the courts of this state, and in the courts of the United States of America sitting in the state, one third
12 of the amount in excess of \$500,000 shall be paid into the Revenue Shortfall Reserve Fund and
13 administered therefrom as provided in section twenty, article two, chapter eleven-b of this code.
14 Nothing in this section shall be construed to give the Revenue Shortfall Reserve Fund any interest
15 in the claim for punitive damages or in the litigation itself at any time prior to payment becoming
16 due upon the entry of a judgment.

17 (f) For civil actions adjudicated in the courts of the state where an award of punitive damages
18 exceeded \$500,000, the defendant(s) shall pay the first \$500,000 of that punitive damages award
19 directly to the plaintiff in accordance with any court order. Any amount in excess of the \$500,000
20 awarded shall be paid to the circuit clerk of the county in which the civil action was maintained. The
21 circuit clerk shall pay to the plaintiff in the civil action, or his or her designee, a sum equal to two
22 thirds of the payment made to the circuit clerk by the defendant(s), after the deduction of any

1 amounts due and owing the court from the plaintiff. The circuit clerk shall remit the balance of the
2 payment, less one percent which shall be retained by the circuit clerk to cover administrative and
3 other costs associated with the obligations imposed under this section, made by the defendant(s) to
4 the State Treasurer, and a statement showing any deductions made therefrom by the circuit clerk,
5 together with a certified copy of the court order awarding punitive damages.

6 (g) For civil actions adjudicated in the courts of the United States of America sitting in the
7 state where an award of punitive damages exceeded \$500,000, a party to such action shall file, upon
8 a form prescribed by the Secretary of Tax and Revenue, an informational return stating the amount
9 of punitive damages in excess of \$500,000 awarded to a plaintiff, the filing of which will be
10 accompanied by a certified copy of the court order making such award. A copy of this return,
11 together with a copy of the court order, shall also be filed with the circuit clerk of the county of
12 residence of the defendant(s), if a natural person, or the county of the principal place of business, if
13 a domestic entity. The defendant(s) shall pay the first \$500,000 of that punitive damages award
14 directly to the plaintiff in accordance with any court order. Any amount in excess of the \$500,000
15 awarded shall be paid to the circuit clerk of the county of residence of the defendant(s), if a natural
16 person, or the county of the principal place of business, if a domestic entity. The circuit clerk shall
17 pay to the plaintiff in the civil action, or his or her designee, a sum equal to two thirds of the payment
18 made to the circuit clerk by the defendant(s), after the deduction of any amounts due and owing the
19 court from the plaintiff. The circuit clerk shall remit the balance of the payment, less one percent
20 which shall be retained by the circuit clerk to cover administrative and other costs associated with
21 the obligations imposed under this section, made by the defendant(s) to the State Treasurer, and a
22 statement showing any deductions made therefrom by the circuit clerk, together with a certified copy

1 of the court order awarding punitive damages.

2 (h) The State Treasurer shall deposit any amounts collected or received under this section into
3 the Revenue Shortfall Reserve Fund and any such deposits shall be administered pursuant to section
4 twenty, article two, chapter eleven-b of this code.

(NOTE: §55-7-27 is new; therefore, strike-throughs and underscoring have been omitted.)