

1 **Senate Bill No. 421**

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

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4 [Introduced February 5, 2015; referred to the Committee on the Judiciary.]  
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9 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
10 designated §55-7-27, relating generally to treatment of punitive damages; providing for  
11 limitations on punitive damages; providing for when punitive damages may be awarded;  
12 providing for a bifurcated trial, upon request, for civil actions involving punitive damages;  
13 providing that one third of all punitive damages awards made in the state be tendered to the  
14 State Treasurer; providing that those remittances be deposited into the Revenue Shortfall  
15 Reserve Fund; and providing that those funds be administered according to section twenty,  
16 article two, chapter eleven-b of this code.

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

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

20 **ARTICLE 7. ACTIONS FOR INJURIES.**

21 **§55-7-27. 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 of  
3 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 shall, upon request of any  
6 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 proceed  
11 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 the  
14 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 under  
16 subsection (c) of this section, the court shall reduce any such award to comply with the limitations  
17 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 two times the amount of compensatory damages or \$500,000, whichever is greater.

20 (d) The Legislature hereby finds that:

21 (1) Punitive damages are a form of damages awarded to a plaintiff in a civil action which are

1 not compensatory in nature, and which are intended solely for the punishment of defendants found  
2 liable for certain bad acts.

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

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

9 (e) One third of all awards of punitive damages in civil actions adjudicated in the courts of  
10 the state, and in the courts of the United States of America sitting in the state, shall be paid into the  
11 Revenue Shortfall Reserve Fund and administered therefrom as provided in section twenty, article  
12 two, chapter eleven-b of this code.

13 (f) For civil actions adjudicated in the courts of the state, payments made by defendants in  
14 compliance with a court order awarding punitive damages shall be to the circuit clerk of the county  
15 in which the civil action was maintained. The circuit clerk shall pay to the plaintiff in the civil  
16 action, or their designee, a sum equal to two thirds of the payment made to the circuit clerk by the  
17 defendant(s), after the deduction of any amounts due and owing the court from the plaintiff. The  
18 circuit clerk shall remit the balance of the payment made by the defendant(s) to the State Treasurer,  
19 and a statement showing any deductions made therefrom by the circuit clerk, together with a certified  
20 copy of the court order awarding punitive damages.

21 (g) For civil actions adjudicated in the courts of the United States of America sitting in the

1 state, a party to such action shall file, upon a form prescribed by the Secretary of Tax and Revenue,  
2 an informational return stating the amount of punitive damages awarded to a plaintiff, the filing of  
3 which will be accompanied by a certified copy of the court order making such award. A copy of this  
4 return, together with a copy of the court order, shall also be filed with the circuit clerk of the county  
5 of residence of the defendant(s), if a natural person, or the county of the principal place of business  
6 if a domestic entity. The defendant(s) shall thereafter make payments in compliance with any such  
7 order to the circuit clerk of such county. The circuit clerk shall pay to the plaintiff in the civil action,  
8 or their designee, a sum equal to two thirds of the payment made to the circuit clerk by the  
9 defendant(s), after the deduction of any amounts due and owing the court from the plaintiff. The  
10 circuit clerk shall remit the balance of the payment made by the defendant(s) to the State Treasurer,  
11 and a statement showing any deductions made therefrom by the circuit clerk, together with a certified  
12 copy of the court order awarding punitive damages.

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

NOTE: The purpose of this bill is to clarify when punitive damages may be awarded in civil actions, and to limit the amount of punitive damages that may be awarded to comport with the due process rights of defendants. The bill also requires that one third of all punitive damages awards made in the state be paid to the State Treasurer and deposited into the Revenue Shortfall Reserve Fund.

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