

Senator Lyle W. Hillyard proposes the following substitute bill:

PUNITIVE DAMAGES AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Kay L. McIff

LONG TITLE

General Description:

This bill makes clarifying amendments to the punitive damages statute.

Highlighted Provisions:

This bill:

- ▶ requires that a court enter a judgment for punitive damages on behalf of the injured party and the state;
 - ▶ changes the initial amount for the injured party from \$20,000 to \$50,000;
 - ▶ sets priorities for collection of judgments and attorney fees and costs;
 - ▶ specifies that the state may use all methods at its disposal to collect its judgment;
- and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-8-201, as renumbered and amended by Laws of Utah 2008, Chapter 3



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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-8-201** is amended to read:

78B-8-201. Basis for punitive damages awards -- Section inapplicable to DUI cases -- Division of award with state.

(1) (a) Except as otherwise provided by statute, punitive damages may be awarded only if compensatory or general damages are awarded and it is established by clear and convincing evidence that the acts or omissions of the tortfeasor are the result of willful and malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and a disregard of, the rights of others.

(b) The limitations, standards of evidence, and standards of conduct of Subsection (1)(a) do not apply to any claim for punitive damages arising out of the tortfeasor's operation of a motor vehicle or motorboat while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs as prohibited by Section 41-6a-502.

(c) The award of a penalty under Section 78B-3-108 regarding shoplifting is not subject to the prior award of compensatory or general damages under Subsection (1)(a) whether or not restitution has been paid to the merchant prior to or as a part of a civil action under Section 78B-3-108.

(2) Evidence of a party's wealth or financial condition shall be admissible only after a finding of liability for punitive damages has been made.

(a) Discovery concerning a party's wealth or financial condition may only be allowed after the party seeking punitive damages has established a prima facie case on the record that an award of punitive damages is reasonably likely against the party about whom discovery is sought and, if disputed, the court is satisfied that the discovery is not sought for the purpose of harassment.

(b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of the tortfeasor's operation of a motor vehicle or motorboat while voluntarily intoxicated or under the influence of any drug or combination of alcohol and drugs as prohibited by Section 41-6a-502.

~~[(3) (a) In any case where punitive damages are awarded, the judgment shall provide that 50% of the amount of the punitive damages in excess of \$20,000 shall, after an allowable~~

57 deduction for the payment of attorney fees and costs, be remitted by the judgment debtor to the
58 state treasurer for deposit into the General Fund.]

59 ~~[(b) For the purposes of this Subsection (3), an "allowable deduction for the payment
60 of attorney fees and costs" shall equal the amount of actual and reasonable attorney fees and
61 costs incurred by the judgment creditor minus the amount of any separate judgment awarding
62 attorney fees and costs to the judgment creditor.]~~

63 ~~[(c) The state shall have all rights due a judgment creditor until the judgment is
64 satisfied, and stand on equal footing with the judgment creditor of the original case in securing
65 a recovery.]~~

66 ~~[(d) Unless all affected parties, including the state, expressly agree otherwise or the
67 application is contrary to the terms of the judgment, any payment on the judgment by or on
68 behalf of any judgment debtor, whether voluntary or by execution or otherwise, shall be
69 applied in the following order:]~~

70 ~~[(i) compensatory damages, and any applicable attorney fees and costs;]~~

71 ~~[(ii) the initial \$20,000 punitive damages; and]~~

72 ~~[(iii) the balance of the punitive damages.]~~

73 (3) (a) In any case where punitive damages are awarded, the court shall enter judgment
74 as follows:

75 (i) for the first \$50,000, judgment shall be in favor of the injured party; and

76 (ii) any amount in excess of \$50,000 shall be divided equally between the state and the
77 injured party, and judgment to each entered accordingly.

78 (b) (i) The actual and bona fide attorney fees and costs incurred in obtaining and
79 collecting the judgment for punitive damages shall be considered to have been incurred by the
80 state and the injured party in proportion to the judgment entered in each party's behalf.

81 (A) The state and injured party shall be responsible for each one's proportionate share
82 only.

83 (B) The state is liable to pay its proportionate share only to the extent it receives
84 payment toward its judgment.

85 (ii) If the court awards attorney fees and costs to the injured party as a direct result of
86 the punitive damage award, the state shall have a corresponding credit in a proportionate
87 amount based on the amounts of the party's respective punitive damage judgments. This credit

88 may be applied as an offset against the amount of attorney fees and costs charged to the state
89 for obtaining the punitive damage judgment.

90 (c) The state shall have all rights due a judgment creditor to collect the full amounts of
91 both punitive damage judgments until the judgments are fully satisfied.

92 (i) Neither party is required to pursue collection.

93 (ii) In pursuing collection, the state may exercise any of its collection rights under
94 Section 63A-3-301 et seq., Section 63A-8-201 et seq., and any other statutory provisions. Any
95 amounts collected on these judgments by either party shall be held in trust and distributed as
96 set forth in Subsection (3)(e).

97 (d) Unless all affected parties, including the state, expressly agree otherwise, collection
98 on the punitive damages judgment shall be deferred until all other judgments have been fully
99 paid. Any payment by or on behalf of any judgment debtor, whether voluntary, by execution,
100 or otherwise, shall be distributed and applied in the following order:

101 (i) to the judgment for compensatory damage and any applicable judgment for attorney
102 fees and costs;

103 (ii) to the initial \$50,000 of the punitive damage judgment;

104 (iii) to any judgment for attorney fees and costs awarded as a direct result of the
105 punitive damages; and

106 (iv) to the remaining judgments for punitive damages.

107 (e) Any partial payments shall be distributed equally between the state and injured
108 party.

109 (f) After the payment of attorney fees and costs, all amounts paid on the state's
110 judgment shall be remitted to the state treasurer to be deposited into the General Fund.

S.B. 155 1st Sub. (Green) - Punitive Damages Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
