

78B-8-201 Basis for punitive damages awards -- Section inapplicable to DUI cases or providing illegal controlled substances -- 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:
 - (i) 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;
 - (ii) causing death of another person by providing or administering an illegal controlled substance to the person under Section 78B-3-801; or
 - (iii) providing an illegal controlled substance to any person in the chain of transfer that connects directly to a person who subsequently provided or administered the substance to a person whose death was caused in whole or in part by the substance.
 - (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:
 - (i) 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;
 - (ii) causing death of another person or causing a person to be addicted by providing or administering an illegal controlled substance to the person under Section 78B-3-801; or
 - (iii) providing an illegal controlled substance to any person in the chain of transfer that connects directly to a person who subsequently provided or administered the substance to a person whose death was caused in whole or in part by the substance.
- (3)
- (a) In any case where punitive damages are awarded, the court shall enter judgment as follows:
 - (i) for the first \$50,000, judgment shall be in favor of the injured party; and
 - (ii) any amount in excess of \$50,000 shall be divided equally between the state and the injured party, and judgment to each entered accordingly.
 - (b)
 - (i) The actual and bona fide attorney fees and costs incurred in obtaining and collecting the judgment for punitive damages shall be considered to have been incurred by the state and the injured party in proportion to the judgment entered in each party's behalf.
 - (A) The state and injured party shall be responsible for each one's proportionate share only.

- (B) The state is liable to pay its proportionate share only to the extent it receives payment toward its judgment.
- (ii) If the court awards attorney fees and costs to the injured party as a direct result of the punitive damage award, the state shall have a corresponding credit in a proportionate amount based on the amounts of the party's respective punitive damage judgments. This credit may be applied as an offset against the amount of attorney fees and costs charged to the state for obtaining the punitive damage judgment.
- (c) The state shall have all rights due a judgment creditor to collect the full amounts of both punitive damage judgments until the judgments are fully satisfied.
 - (i) Neither party is required to pursue collection.
 - (ii) In pursuing collection, the state may exercise any of its collection rights under Section 63A-3-301 et seq., Section 63A-3-502 et seq., and any other statutory provisions. Any amounts collected on these judgments by either party shall be held in trust and distributed as set forth in Subsection (3)(e).
- (d) Unless all affected parties, including the state, expressly agree otherwise, collection on the punitive damages judgment shall be deferred until all other judgments have been fully paid. Any payment by or on behalf of any judgment debtor, whether voluntary, by execution, or otherwise, shall be distributed and applied in the following order:
 - (i) to the judgment for compensatory damage and any applicable judgment for attorney fees and costs;
 - (ii) to the initial \$50,000 of the punitive damage judgment;
 - (iii) to any judgment for attorney fees and costs awarded as a direct result of the punitive damages; and
 - (iv) to the remaining judgments for punitive damages.
- (e) Any partial payments shall be distributed equally between the state and injured party.
- (f) After the payment of attorney fees and costs, all amounts paid on the state's judgment shall be remitted to the state treasurer to be deposited into the General Fund.

Amended by Chapter 79, 2011 General Session