

**PUNITIVE DAMAGES AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Lyle W. Hillyard**

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**LONG TITLE**

**General Description:**

This bill makes changes concerning the division of punitive damage awards with the state.

**Highlighted Provisions:**

This bill:

- ▶ requires that the state's portion of a punitive damage award be paid directly to the state by the judgment debtor;
- ▶ puts the state on the same footing as another judgment creditor when collecting punitive damages; and
- ▶ prescribes a priority and order for the payment of punitive damages.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78-18-1**, as last amended by Chapters 200 and 314, Laws of Utah 2002

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

Section 1. Section **78-18-1** is amended to read:

**78-18-1. Basis for punitive damages awards -- Section inapplicable to DUI cases**



## 28 -- Division of award with state.

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

34 (b) The limitations, standards of evidence, and standards of conduct of Subsection  
 35 (1)(a) do not apply to any claim for punitive damages arising out of the tortfeasor's operation of  
 36 a motor vehicle or motorboat while voluntarily intoxicated or under the influence of any drug  
 37 or combination of alcohol and drugs as prohibited by Section 41-6-44.

38 (c) The award of a penalty under Section 78-11-15 or 78-11-16 regarding shoplifting is  
 39 not subject to the prior award of compensatory or general damages under Subsection (1)(a)  
 40 whether or not restitution has been paid to the merchant prior to or as a part of a civil action  
 41 under Section 78-11-15 or 78-11-16.

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

44 (3) (a) In any **§ [judgment] CASE §** where punitive damages are awarded ~~[and paid]~~, **§ THE**  
 44a **JUDGMENT SHALL PROVIDE THAT §** 50% of the  
 45 amount of the punitive damages in excess of \$20,000 shall, **§ [by order of the trial court] §** after an  
 46 allowable deduction for the payment of attorneys' fees and costs, be remitted by the judgment  
 47 debtor to the state treasurer for deposit into the General Fund.

48 (b) For the purposes of this Subsection (3), an "allowable deduction for the payment of  
 49 attorneys' fees and costs" shall equal the amount of actual and reasonable attorneys' fees and  
 50 costs incurred by the judgment creditor **§ [~~as determined by an order of the court,~~] §** minus the  
 51 amount of any separate judgment awarding attorneys' fees and costs to the judgment creditor.

52 (c) The state shall have all rights due a judgment creditor until the judgment is  
 53 satisfied, and stand on equal footing with the judgment creditor of the original case in securing  
 54 a recovery.

55 (d) Unless all affected parties, including the state, expressly agree otherwise or the  
 56 application is contrary to the terms of the judgment, any payment on the judgment by or on  
 57 behalf of any judgment debtor, whether voluntary or by execution or otherwise, shall be  
 58 applied in the following order:

59            (i) compensatory damages § , AND ANY APPLICABLE ATTORNEYS FEES AND COSTS § ;  
60            § ~~[(ii) applicable attorney fees and costs;~~  
61            ~~[(iii)]~~ (ii) § the initial \$20,000 punitive damages; and finally  
62            § ~~[(iv)]~~ (iii) § the balance of the punitive damages.

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**Legislative Review Note**  
as of 2-11-04 9:43 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**State Impact**

This legislation could enhance the state's ability to collect its share of punitive damages on judgments, however, the amount is undeterminable.

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**Individual and Business Impact**

Fiscal impacts resulting from court judgments is not known.

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**Office of the Legislative Fiscal Analyst**