

PUNITIVE DAMAGES AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

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

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 where punitive damages are awarded [~~and paid~~], 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;
- 60 (ii) applicable attorney fees and costs;
- 61 (iii) the initial \$20,000 punitive damages; and finally
- 62 (iv) the balance of the punitive damages.

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.

Individual and Business Impact

Fiscal impacts resulting from court judgments is not known.

Office of the Legislative Fiscal Analyst