

1 **PUNITIVE DAMAGES - DISCOVERY OF**
2 **WEALTH**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Gregory S. Bell**

6 House Sponsor: Scott L Wyatt

7
8 **LONG TITLE**

9 **General Description:**

10 This bill requires that before discovery of a party's wealth or financial condition is
11 conducted, a prima facie case must be made that an award of punitive damages is
12 reasonably probable.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ requires a prima facie case that an award of punitive damages is reasonably
16 probable before discovery is permitted concerning a party's wealth or financial
17 condition.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **78-18-1**, as last amended by Chapter 2, Laws of Utah 2005

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

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



28 **78-18-1. Basis for punitive damages awards -- Section inapplicable to DUI cases**
 29 **-- Division of award with state.**

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

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

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

43 (2) ~~§~~ ~~→~~ ~~[(a)]~~ ~~←~~ ~~§~~ Evidence of a party's wealth or financial condition shall be admissible only
 43a after
 44 a finding of liability for punitive damages has been made.

45 ~~§~~ ~~→~~ ~~[(b)]~~ (a) ~~←~~ ~~§~~ Discovery concerning a party's wealth or financial condition may only be
 45a allowed
 46 after the party seeking punitive damages has established a prima facie case ~~§~~ ~~→~~ on the record ~~←~~ ~~§~~
 46a that an award of
 47 punitive damages is reasonably ~~§~~ ~~→~~ [probable] ~~Ĥ~~ ~~→~~ [likely] ~~←~~ ~~§~~ possible ~~←~~ ~~Ĥ~~ against the party
 47a about whom
 47b discovery is sought ~~§~~ ~~→~~ and, if disputed, the court is satisfied that the discovery is not sought
 47c for the purpose of harassment ~~←~~ ~~§~~ .

47d ~~§~~ ~~→~~ (b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of
 47e the tortfeasor's operation of a motor vehicle or motorboat while voluntarily intoxicated or
 47f under the influence of any drug or combination of alcohol and drugs as prohibited by Section
 47g 41-6a-502. ~~←~~ ~~§~~

48 (3) (a) In any case where punitive damages are awarded, the judgment shall provide
 49 that 50% of the amount of the punitive damages in excess of \$20,000 shall, after an allowable
 50 deduction for the payment of attorneys' fees and costs, be remitted by the judgment debtor to
 51 the state treasurer for deposit into the General Fund.

52 (b) For the purposes of this Subsection (3), an "allowable deduction for the payment of
53 attorneys' fees and costs" shall equal the amount of actual and reasonable attorneys' fees and
54 costs incurred by the judgment creditor minus the amount of any separate judgment awarding
55 attorneys' fees and costs to the judgment creditor.

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



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

- 63 (i) compensatory damages, and any applicable attorneys fees and costs;
- 64 (ii) the initial \$20,000 punitive damages; and
- 65 (iii) the balance of the punitive damages.

Legislative Review Note
as of 1-16-06 6:25 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0148

Punitive Damages - Discovery of Wealth

21-Jan-06

3:02 PM

State Impact

No Fiscal Impact.

Individual and Business Impact

No Fiscal Impact.

Office of the Legislative Fiscal Analyst