

**PUNITIVE DAMAGES - DISCOVERY OF
WEALTH**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: Scott L Wyatt

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

50 (b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of
51 the tortfeasor's operation of a motor vehicle or motorboat while voluntarily intoxicated or
52 under the influence of any drug or combination of alcohol and drugs as prohibited by Section
53 41-6a-502.

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

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

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

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

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