

HOUSE BILL No. 2683

By Committee on Judiciary

2-3

9 AN ACT concerning punitive damages; relating to splitting damage
10 awards; amending K.S.A. 60-3701 and 60-3702 and repealing the ex-
11 isting sections.

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 60-3701 is hereby amended to read as follows: 60-
15 3701. (a) In any civil action in which exemplary or punitive damages are
16 recoverable, the trier of fact shall determine, concurrent with all other
17 issues presented, whether such damages shall be allowed. If such damages
18 are allowed, a separate proceeding shall be conducted by the court to
19 determine the amount of such damages to be awarded.

20 (b) At a proceeding to determine the amount of exemplary or puni-
21 tive damages to be awarded under this section, the court may consider:

22 (1) The likelihood at the time of the alleged misconduct that serious
23 harm would arise from the defendant's misconduct;

24 (2) the degree of the defendant's awareness of that likelihood;

25 (3) the profitability of the defendant's misconduct;

26 (4) the duration of the misconduct and any intentional concealment
27 of it;

28 (5) the attitude and conduct of the defendant upon discovery of the
29 misconduct;

30 (6) the financial condition of the defendant; and

31 (7) the total deterrent effect of other damages and punishment im-
32 posed upon the defendant as a result of the misconduct, including, but
33 not limited to, compensatory, exemplary and punitive damage awards to
34 persons in situations similar to those of the claimant and the severity of
35 the criminal penalties to which the defendant has been or may be
36 subjected.

37 At the conclusion of the proceeding, the court shall determine the
38 amount of exemplary or punitive damages to be awarded and shall enter
39 judgment for that amount.

40 (c) In any civil action where claims for exemplary or punitive damages
41 are included, the plaintiff shall have the burden of proving, by clear and
42 convincing evidence in the initial phase of the trial, that the defendant
43 acted toward the plaintiff with willful conduct, wanton conduct, fraud or

1 malice.

2 (d) In no case shall exemplary or punitive damages be assessed pur-
3 suant to this section against:

4 (1) A principal or employer for the acts of an agent or employee
5 unless the questioned conduct was authorized or ratified by a person
6 expressly empowered to do so on behalf of the principal or employer; or

7 (2) an association, partnership or corporation for the acts of a mem-
8 ber, partner or shareholder unless such association, partnership or cor-
9 poration authorized or ratified the questioned conduct.

10 (e) Except as provided by subsection (f), no award of exemplary or
11 punitive damages pursuant to this section shall exceed the lesser of:

12 (1) The annual gross income earned by the defendant, as determined
13 by the court based upon the defendant's highest gross annual income
14 earned for any one of the five years immediately before the act for which
15 such damages are awarded; or

16 (2) \$5 million.

17 (f) In lieu of the limitation provided by subsection (e), if the court
18 finds that the profitability of the defendant's misconduct exceeds or is
19 expected to exceed the limitation of subsection (e), the limitation on the
20 amount of exemplary or punitive damages which the court may award
21 shall be an amount equal to 1½ times the amount of profit which the
22 defendant gained or is expected to gain as a result of the defendant's
23 misconduct.

24 (g) The provisions of this section shall not apply to any action gov-
25 erned by another statute establishing or limiting the amount of exemplary
26 or punitive damages, or prescribing procedures for the award of such
27 damages, in such action.

28 (h) *If exemplary or punitive damages are awarded, after attorney fees
29 and costs have been paid, 75% of the award shall be ordered to be de-
30 posited in the state treasury and credited to the state general fund and
31 25% of the award shall be distributed to the plaintiff. If such civil action
32 is to a jury, the court shall not instruct the jury on the award distribution
33 imposed by this subsection upon recovery of punitive or exemplary
34 damages.*

35 ~~(i)~~ (i) As used in this section the terms defined in K.S.A. 60-3401
36 and amendments thereto shall have the meaning provided by that statute.

37 ~~(j)~~ (j) The provisions of this section shall apply only to an action based
38 upon a cause of action accruing on or after July 1, 1987 and before July
39 1, 1988.

40 Sec. 2. K.S.A. 60-3702 is hereby amended to read as follows: 60-
41 3702. (a) In any civil action in which exemplary or punitive damages are
42 recoverable, the trier of fact shall determine, concurrent with all other
43 issues presented, whether such damages shall be allowed. If such damages

1 are allowed, a separate proceeding shall be conducted by the court to
2 determine the amount of such damages to be awarded.

3 (b) At a proceeding to determine the amount of exemplary or puni-
4 tive damages to be awarded under this section, the court may consider:

5 (1) The likelihood at the time of the alleged misconduct that serious
6 harm would arise from the defendant's misconduct;

7 (2) the degree of the defendant's awareness of that likelihood;

8 (3) the profitability of the defendant's misconduct;

9 (4) the duration of the misconduct and any intentional concealment
10 of it;

11 (5) the attitude and conduct of the defendant upon discovery of the
12 misconduct;

13 (6) the financial condition of the defendant; and

14 (7) the total deterrent effect of other damages and punishment im-
15 posed upon the defendant as a result of the misconduct, including, but
16 not limited to, compensatory, exemplary and punitive damage awards to
17 persons in situations similar to those of the claimant and the severity of
18 the criminal penalties to which the defendant has been or may be
19 subjected.

20 At the conclusion of the proceeding, the court shall determine the
21 amount of exemplary or punitive damages to be awarded and shall enter
22 judgment for that amount.

23 (c) In any civil action where claims for exemplary or punitive damages
24 are included, the plaintiff shall have the burden of proving, by clear and
25 convincing evidence in the initial phase of the trial, that the defendant
26 acted toward the plaintiff with willful conduct, wanton conduct, fraud or
27 malice.

28 (d) In no case shall exemplary or punitive damages be assessed pur-
29 suant to this section against:

30 (1) A principal or employer for the acts of an agent or employee
31 unless the questioned conduct was authorized or ratified by a person
32 expressly empowered to do so on behalf of the principal or employer; or

33 (2) an association, partnership or corporation for the acts of a mem-
34 ber, partner or shareholder unless such association, partnership or cor-
35 poration authorized or ratified the questioned conduct.

36 (e) Except as provided by subsection (f), no award of exemplary or
37 punitive damages pursuant to this section shall exceed the lesser of:

38 (1) The annual gross income earned by the defendant, as determined
39 by the court based upon the defendant's highest gross annual income
40 earned for any one of the five years immediately before the act for which
41 such damages are awarded, unless the court determines such amount is
42 clearly inadequate to penalize the defendant, then the court may award
43 up to 50% of the net worth of the defendant, as determined by the court;

1 or

2 (2) \$5 million.

3 (f) In lieu of the limitation provided by subsection (e), if the court
4 finds that the profitability of the defendant's misconduct exceeds or is
5 expected to exceed the limitation of subsection (e), the limitation on the
6 amount of exemplary or punitive damages which the court may award
7 shall be an amount equal to 1½ times the amount of profit which the
8 defendant gained or is expected to gain as a result of the defendant's
9 misconduct.

10 (g) *If exemplary or punitive damages are awarded, after attorney fees
11 and costs have been paid, 75% of the award shall be ordered to be de-
12 posited in the state treasury and credited to the state general fund and
13 25% of the award shall be distributed to the plaintiff. If such civil action
14 is to a jury, the court shall not instruct the jury on the award distribution
15 imposed by this subsection upon recovery of punitive or exemplary
16 damages.*

17 ~~(g)~~ (h) As used in this section the terms defined in K.S.A. 60-3401,
18 and amendments thereto, shall have the meaning provided by that statute.

19 ~~(h)~~ (i) The provisions of this section shall apply only to an action based
20 upon a cause of action accruing on or after July 1, 1988.

21 Sec. 3. K.S.A. 60-3701 and 60-3702 are hereby repealed.

22 Sec. 4. This act shall take effect and be in force from and after its
23 publication in the statute book.