

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2023 Session of
1987

INTRODUCED BY DAWIDA, BATTISTO, GODSHALL, SAURMAN, MORRIS,
SHOWERS, FARGO, S. H. SMITH AND HECKLER, DECEMBER 1, 1987

REFERRED TO COMMITTEE ON JUDICIARY, DECEMBER 1, 1987

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, regulating the awarding
3 of punitive damages.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Chapter 83 of Title 42 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subchapter to read:

8 CHAPTER 83

9 PARTICULAR RIGHTS AND IMMUNITIES

10 * * *

11 SUBCHAPTER G

12 PUNITIVE DAMAGES

13 § 8371. Procedures for trial.

14 (a) Bifurcation.--In any civil action where claims for
15 punitive damages are included, the trial shall be bifurcated. In
16 the trial's first phase, the trier of fact shall determine,
17 concurrent with all other issues presented, whether punitive
18 damages may be assessed. If the trier of fact is a jury, the

1 verdict must be unanimous on the issue of liability for punitive
2 damages.

3 (b) Assessment by court.--If liability for punitive damages
4 is found in the trial's first phase, the judge shall then assess
5 the sum of punitive damages in the trial's second phase. The
6 judge may consider evidence not formally admitted at trial,
7 including economic and social policy. The judge may hear any
8 evidence outside the record that would be an aid in determining
9 the amount of punitive damages to be assessed. The defendants
10 shall have the right in the trial's second phase to introduce
11 expert testimony concerning the assessment of punitive damages.
12 No evidence of the defendant's wealth or financial condition
13 shall be admissible during the trial's first phase. No discovery
14 of the defendant's financial condition shall occur unless
15 liability for punitive damages is found by the trier of fact.

16 (c) Limitation.--No claimant shall receive more than one
17 award of punitive damages for each tort suffered.

18 § 8372. Burden of proof.

19 In any civil action where claims for punitive damages are
20 included, the plaintiff shall have the burden of proving the
21 defendant's culpability beyond a reasonable doubt in the initial
22 phase of the trial. Presumptions shall not be used to shift the
23 burden of proof to the defendant. The reasonable doubt standard
24 as used in this section creates the same evidentiary burden that
25 a prosecutor has with respect to a defendant charged with a
26 crime. Each element in a punitive damages liability verdict must
27 be based on facts proved beyond a reasonable doubt.

28 § 8373. Defendant's conduct.

29 (a) General rule.--In determining the culpability of a
30 defendant in the first phase of the trial, it must be proven

1 that the defendant acted toward the plaintiff with oppression,
2 fraud or malice.

3 (b) Definitions.--As used in this section, the following
4 words and phrases shall have the meanings given to them in this
5 subsection:

6 "Fraud." An intentional misrepresentation, deceit or
7 concealment of a material fact known to the defendant with the
8 intention on the part of the defendant of thereby depriving a
9 person of property or legal rights or otherwise causing injury.

10 "Malice." Conduct which is specifically intended by the
11 defendant to cause tangible or intangible injury to the
12 plaintiff, or an act that is carried out with a flagrant
13 indifference to the rights of others and with a subjective
14 awareness that such an act will result in human death or great
15 bodily harm.

16 "Oppression." A specific intent to subject a person to cruel
17 and unjust hardship.

18 § 8374. Award to defendant.

19 Punitive damages may be denied for any harm where the
20 defendant has acted in good faith, or on the advice of an
21 attorney, or on the advice of any government official, or where
22 the defendant has relied upon a statute or judicial decision.

23 § 8375. Payment of damages.

24 All punitive damages recovered shall be paid into the General
25 Fund of the Commonwealth, except for 20% of such recovery, which
26 shall be awarded to the plaintiff. This established distribution
27 scheme shall not be introduced as evidence and shall not be a
28 proper subject matter on voir dire.

29 § 8376. Award to defendant.

30 Upon motion of the defendant and after a hearing, should the

1 court determine that a claim for punitive damages was brought in
2 bad faith, the court may award to the defendant such costs,
3 expenses and reasonable attorney fees as the court deems fair
4 and equitable, and may grant judgment therefor against the
5 plaintiff.

6 § 8377. Vicarious liability.

7 The court may deny punitive damages if the principal or
8 employer can establish that the employee or agent was acting
9 outside of the scope of employment or authority.

10 Section 2. This act shall take effect immediately.