

SENATE BILL No. 96

By Committee on Judiciary

1-25

9 AN ACT concerning punitive damages; relating to splitting damage
10 awards; amending K.S.A. 60-3702 and repealing the existing section.

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

13 Section 1. K.S.A. 60-3702 is hereby amended to read as follows: 60-
14 3702. (a) In any civil action in which exemplary or punitive damages are
15 recoverable, the trier of fact shall determine, concurrent with all other
16 issues presented, whether such damages shall be allowed. If such damages
17 are allowed, a separate proceeding shall be conducted by the court to
18 determine the amount of such damages to be awarded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (1) The annual gross income earned by the defendant, as determined
12 by the court based upon the defendant's highest gross annual income
13 earned for any one of the five years immediately before the act for which
14 such damages are awarded, unless the court determines such amount is
15 clearly inadequate to penalize the defendant, then the court may award
16 up to 50% of the net worth of the defendant, as determined by the court;
17 or

18 (2) \$5 million.

19 (f) In lieu of the limitation provided by subsection (e), if the court
20 finds that the profitability of the defendant's misconduct exceeds or is
21 expected to exceed the limitation of subsection (e), the limitation on the
22 amount of exemplary or punitive damages which the court may award
23 shall be an amount equal to 1 1/2 times the amount of profit which the
24 defendant gained or is expected to gain as a result of the defendant's
25 misconduct.

26 (g) *If exemplary or punitive damages are awarded, the entire award*
27 *shall be ordered to be deposited in the state treasury and credited to the*
28 *state general fund. If such civil action is to a jury, the court shall not*
29 *instruct the jury on the award distribution imposed by this subsection*
30 *upon recovery of punitive or exemplary damages.*

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

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

35 Sec. 2. K.S.A. 60-3702 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its
37 publication in the statute book.