

SHORT TITLE: Torts; creating the Punitive Damages Act; limiting amount of punitive damages award; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 443

By: Campbell

AS INTRODUCED

An Act relating to punitive damages in civil actions; creating the Punitive Damages Act; providing short title; defining terms; requiring specific prayer for punitive damages; allowing certain action by court unless presented with certain evidence; allowing certain actions to be tried in bifurcated trial and providing procedure; authorizing court to determine punitive damages and requiring consideration of certain factors; requiring separate judgment and limiting liability for each defendant; setting certain standard of proof; limiting amount of punitive damages award; construing act; determining application of act to certain suits and claims; repealing 23 O.S. 1991, Sections 9 and 68, which relate to exemplary damages; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110 of Title 23, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Punitive Damages Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.1 of Title 23, unless there is created a duplication in numbering, reads as follows:

In this act:

1. "Clear and convincing evidence" means evidence which leaves no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of evidence, but less evidence than beyond a reasonable doubt;

2. "Compensatory damages" means damages intended to make good the loss of an injured party and no more. The term includes general and special damages and does not include nominal, exemplary, or punitive damages;

3. "Malice" means either conduct which is specifically intended by the defendant to cause tangible or intangible serious injury to the plaintiff or conduct that is carried out by the defendant both with a flagrant indifference to the rights of the plaintiff and with a subjective awareness that such conduct will result in tangible or intangible serious injury;

4. "Nominal damages" are damages that are not designed to compensate a plaintiff for the actual cost of damages incurred and are less than Five Hundred Dollars (\$500.00); and

5. "Punitive damages" includes exemplary damages and means damages awarded against a party in a civil action because of aggravating circumstances in order to penalize and to provide additional deterrence against a defendant to discourage similar conduct in the future. Punitive damages do not include compensatory damages or nominal damages.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.2 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. An award of punitive damages must be specifically prayed for in the complaint.

B. The plaintiff must specifically plead either:

1. That at least thirty (30) days in advance of filing the complaint, the plaintiff has given notice to the defendant of seeking damages pursuant to this act and in good faith a reasonable settlement could not be reached; or

2. That thirty (30) days' notice could not be given pursuant to this act because of exigent circumstances.

C. The plaintiff shall not specifically plead an amount of punitive damages, only that punitive damages are sought in the action.

D. The prayer for punitive damages shall be stricken prior to trial, unless the plaintiff presents prima facie evidence sufficient to sustain an award of punitive damages under this act to the court at least thirty (30) days prior to trial.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.3 of Title 23, unless there is created a duplication in numbering, reads as follows:

A. All actions tried before a jury involving punitive damages shall, if requested by any defendant, be conducted in a bifurcated trial before the same jury.

B. In the first stage of a bifurcated trial, the jury shall determine liability for compensatory damages and the amount of compensatory damages or nominal damages. Evidence relevant only to the issue of punitive damages shall not be admissible in this stage.

C. Punitive damages may be awarded only if compensatory damages have been awarded in the first stage of the trial. An award of nominal damages cannot support an award of punitive damages.

D. In the second stage of a bifurcated trial, the jury shall determine if a defendant is liable for punitive damages.

E. When a jury decides that the defendant is liable for punitive damages, the court shall determine the amount of punitive damages.

F. In all cases involving an award of punitive damages, the court, in determining the amount of punitive damages, shall include in its consideration:

1. Prior damage awards for the same wrongful act;

2. The effect on other potential claimants of a punitive damages award;

3. The deterrent provided by compensatory damages in the case; and

4. The potential or prior criminal and administrative penalties against the defendant for the same wrongful act.

G. The amount of punitive damages shall be reduced pursuant to the contributory or comparative fault principles of the law of this state. In any action in which there are two (2) or more defendants, an award of punitive damages must be specific as to a defendant, and each defendant is liable only for the amount of the award made against that defendant.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.4 of Title 23, unless there is created a duplication in numbering, reads as follows:

Before a plaintiff may recover punitive damages in any civil action, the plaintiff must establish, by clear and convincing evidence, sufficient facts to support the recovery of punitive damages. The plaintiff must establish that the defendant's actions showed malice. This burden of proof may not be satisfied by proof of any degree of negligence including gross negligence.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.5 of Title 23, unless there is created a duplication in numbering, reads as follows:

No award of punitive damages shall exceed the amount of total compensatory damages awarded to the plaintiff in the action.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.6 of Title 23, unless there is created a duplication in numbering, reads as follows:

Nothing contained in this act is to be construed as creating any claim for punitive damages which is not now present under the laws of this state.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.7 of Title 23, unless there is created a duplication in numbering, reads as follows:

This act shall apply to any civil suit for damages commencing on or after one hundred twenty (120) days from the date of enactment of this act regardless of whether the claim arose prior to the date of enactment.

SECTION 9. REPEALER 23 O.S. 1991, Sections 9 and 68, are hereby repealed.

SECTION 10. This act shall become effective November 1, 1995.

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