



House  
Legislative  
Analysis  
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## ALLOW PUNITIVE DAMAGES IN CERTAIN TORT CASES

### House Bill 5373 as passed by the House First Analysis (12-4-97)

**Sponsor: Rep. Ted Wallace**

**Committee: Judiciary**

#### **THE APPARENT PROBLEM:**

As a general principle, Michigan has restricted the use of punitive or exemplary damages awards in civil cases.

Awards of punitive or exemplary damages are amounts that are awarded in addition to other types of damage awards, such as for compensation for pain and suffering, lost wages, medical expenses or out-of-pocket expenses. Traditionally, punitive damages were awarded when the wrongdoer had intentionally or maliciously injured another. The purpose of punitive awards is to punish the wrongdoer and to deter others from engaging in similar actions. Currently, Michigan law only allows for punitive damage awards under limited circumstances, and under some of these circumstances the awards are capped. It has been suggested that greater allowance should be made for awarding punitive damages in tort actions where the defendant's conduct was particularly egregious.

#### **THE CONTENT OF THE BILL:**

The bill would amend the Revised Judicature Act of 1961 to allow a trier of fact (judge or jury) to award punitive damages against a defendant in a personal injury action. Specifically, punitive damages could be awarded where the trier of fact determined that the defendant was at fault and the conduct that had been the proximate cause of the injury was intentional, malicious, fraudulent, done with a conscious and deliberate disregard of the safety of others, or in violation of a criminal law of this state, a political subdivision of this state, or the United States.

MCL 600.6313

#### **FISCAL IMPLICATIONS:**

Fiscal information is not available.

#### **ARGUMENTS:**

##### **For:**

People who intentionally cause harm to others should be subject to the most meaningful civil punishment--punitive damages. Although many offer wild horror stories of excessive punitive damage awards, these awards are relatively rare and are intended to punish and deter the most egregious wrongful conduct. According to a study by the Roscoe Pound Foundation in Washington, D.C. using information collected on all punitive damage jury verdicts since 1965, punitive damages are rarely awarded, even more rarely paid, and are frequently reduced after trial. Since 1965 only 355 punitive damage verdicts were returned by juries in state and federal courts and one-quarter of these awards stemmed from asbestos cases. In 111 of these cases the plaintiffs never received the award, in 39 of them a reduced award was received, and only 126 received the full award. Further, the median punitive damage award for all product liability was \$625,000. Furthermore, seemingly excessive awards often, on further review, can be explained either by the particularly deplorable behavior of the wrongdoer and/or because the jury concluded that the large amount is warranted because of the wealth of the wrongdoer--an amount that seems huge to most people may seem insignificant to a multi-billion dollar corporation. The aggravating factors most often cited as leading to high awards were a failure to reduce a known risk of danger and failure to warn consumers about those risks.

##### **Against:**

The argument that huge punitive damage verdicts aren't awarded very often is of little comfort to the company that gets hit with a multi-million dollar punitive damage award that puts them out of business. Another problem with punitive damages is that plaintiffs can use the threat of such damages as a lever in settlement negotiations.

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The threat is particularly strong where the jury could be swayed by sympathy for a plaintiff who has either been grievously harmed or killed. This threat of an outrageously high verdict based upon sympathy will encourage defendants to settle cases for much more than is actually warranted on the facts of the case. In most civil cases, defendants are insured and the defense and the money for the settlement or judgment is paid, either in whole or in part, by the insurance company. As a result, as the threat of higher and higher damages awards increases because of punitive damages, insurance companies will be forced to raise their rates. Thus, allowing punitive damages will lead to increased jury awards, particularly against corporate defendants who are perceived as having "deep pockets", and thereby will lead to increased insurance costs.

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

There is no good reason to make this change and broadly allow punitive damages. Michigan has done without them for some time--why start to allow them now? The rest of the country is going in the opposite direction, attempting to reduce litigiousness and the threat of unfair, arbitrary, and excessive awards by juries.

**POSITIONS:**

The Michigan Consumer Federation supports the bill. (12-2-97)

The Michigan Trial Lawyers Association supports the bill. (12-2-97)

The Michigan AFL-CIO supports the bill. (12-2-97)

The Detroit Regional Chamber opposes the bill. (12-2-97)

The Michigan Chamber of Commerce opposes the bill. (12-2-97)

The Michigan Farm Bureau opposes the bill. (12-3-97)

The Small Business Association of Michigan opposes the bill. (12-3-97)

The National Federation of Independent Business opposes the bill. (12-2-97)

The Michigan Manufacturers Association opposes the bill. (12-2-97)

Analyst: W. Flory

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