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**By: Senator Ferguson**

Introduced and read first time: February 2, 1996

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Civil Actions - Punitive Damages**

3 FOR the purpose of prohibiting a party in a civil action from claiming punitive damages  
4 except under the procedures established by this Act; requiring a claim for punitive  
5 damages to meet certain standards; requiring courts to give certain jury instructions  
6 concerning punitive damage awards; providing the standard of proof required for an  
7 award of punitive damages; prohibiting an award of punitive damages against  
8 certain persons under certain circumstances; defining certain terms; providing for  
9 the application of this Act; and generally relating to the award of punitive damages  
10 in civil actions.

11 BY renumbering

12 Article - Courts and Judicial Proceedings  
13 Section 10-913(b)  
14 to be Section 10-913(c)  
15 Annotated Code of Maryland  
16 (1995 Replacement Volume and 1995 Supplement)

17 BY repealing and reenacting, with amendments,

18 Article - Courts and Judicial Proceedings  
19 Section 10-913(a)  
20 Annotated Code of Maryland  
21 (1995 Replacement Volume and 1995 Supplement)

22 BY adding to

23 Article - Courts and Judicial Proceedings  
24 Section 11-901 through 11-907, inclusive, to be under the new subtitle "Subtitle 9.  
25 Punitive Damages"  
26 Annotated Code of Maryland  
27 (1995 Replacement Volume and 1995 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
29 MARYLAND, That Section(s) 10-913(b) of Article - Courts and Judicial Proceedings of  
30 the Annotated Code of Maryland be renumbered to be Section(s) 10-913(c).

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1 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
2 read as follows:

3 **Article - Courts and Judicial Proceedings**

4 10-913.

5 (a) IN THIS SECTION, "PUNITIVE DAMAGES" HAS THE SAME MEANING STATED  
6 IN § 11-901 OF THIS ARTICLE.

7 (B) In any action for punitive damages [for personal injury], evidence of the  
8 defendant's financial means is not admissible until there has been a finding of liability  
9 and that punitive damages are supportable under the facts.

10 SUBTITLE 9. PUNITIVE DAMAGES.

11 11-901.

12 IN THIS SUBTITLE, "PUNITIVE DAMAGES" MEANS A MONETARY AWARD THAT  
13 IS IN EXCESS OF OR IN ADDITION TO COMPENSATORY DAMAGES AWARDED TO A  
14 PLAINTIFF AND THAT IS INTENDED TO PUNISH THE DEFENDANT AND TO DETER THE  
15 DEFENDANT AND OTHERS FROM COMMITTING SUCH PUNISHABLE CONDUCT IN THE  
16 FUTURE.

17 11-902.

18 (A) EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BY ANOTHER STATUTE  
19 IN FORCE IN THE STATE ON OR AFTER OCTOBER 1, 1996, THIS SUBTITLE APPLIES TO  
20 ANY ACTION FOR PUNITIVE DAMAGES.

21 (B) NOTHING IN THIS SUBTITLE CHANGES OR AFFECTS THE MARYLAND LAW  
22 AND PROCEDURE REGARDING COMPENSATORY DAMAGES.

23 11-903.

24 (A) A CLAIM FOR PUNITIVE DAMAGES IN A CIVIL ACTION SHALL COMPLY  
25 WITH THE PROVISIONS OF THIS SUBTITLE AND § 10-913(B) OF THIS ARTICLE.

26 (B) AN AWARD OF PUNITIVE DAMAGES MAY NOT BE MADE IN THE ABSENCE  
27 OF AN AWARD OF COMPENSATORY DAMAGES.

28 11-904.

29 IN ORDER FOR A PARTY TO RECOVER PUNITIVE DAMAGES, THE FINDER OF  
30 FACT SHALL FIND BY CLEAR AND CONVINCING EVIDENCE THAT:

31 (1) THE PARTY FROM WHOM PUNITIVE DAMAGES ARE SOUGHT ACTED  
32 IN A MANNER JUSTIFYING THE IMPOSITION OF PUNITIVE DAMAGES UNDER  
33 MARYLAND LAW; AND

34 (2) THE AMOUNT OF PUNITIVE DAMAGES TO BE AWARDED IS  
35 CONSISTENT WITH THE PRINCIPLES AND FACTORS STATED IN § 11-905 OF THIS  
36 SUBTITLE.

1 11-905.

2 IN A JURY TRIAL IN WHICH A PARTY SEEKS PUNITIVE DAMAGES, THE COURT,  
3 IN ADDITION TO DESCRIBING THE STANDARD OF PROOF REQUIRED BY § 11-904 OF  
4 THIS SUBTITLE AND GIVING ANY OTHER PROPER INSTRUCTIONS, INCLUDING THE  
5 APPROPRIATE STANDARD OF CONDUCT REQUIRED TO ESTABLISH LIABILITY FOR  
6 PUNITIVE DAMAGES UNDER APPLICABLE MARYLAND LAW, SHALL INSTRUCT THE  
7 JURY THAT:

8 (1) THE PURPOSE OF PUNITIVE DAMAGES IS NOT TO COMPENSATE THE  
9 PLAINTIFF FOR AN INJURY, BUT RATHER TO PUNISH THE DEFENDANT AND TO  
10 DETER THE DEFENDANT AND OTHERS FROM COMMITTING SUCH PUNISHABLE  
11 CONDUCT IN THE FUTURE;

12 (2) AN AWARD OF PUNITIVE DAMAGES MUST BE REASONABLY  
13 RELATED TO THE GOALS OF PUNISHMENT AND DETERRENCE AND SHOULD  
14 REASONABLY RELATE TO THE PLAINTIFF'S ACTUAL HARM; AND

15 (3) THE JURY SHALL CONSIDER THE FOLLOWING FACTORS, AMONG  
16 OTHER APPROPRIATE FACTORS ON WHICH INSTRUCTION IS GIVEN BY THE COURT,  
17 IN DETERMINING THE PROPER AMOUNT OF PUNITIVE DAMAGES TO BE AWARDED:

18 (I) WHETHER THERE IS A REASONABLE RELATIONSHIP BETWEEN  
19 THE PUNITIVE DAMAGE AWARD CLAIMED AND THE HARM LIKELY TO RESULT  
20 FROM THE DEFENDANT'S CONDUCT AS WELL AS THE HARM THAT ACTUALLY HAS  
21 OCCURRED;

22 (II) THE DEGREE OF REPREHENSIBILITY OF THE DEFENDANT'S  
23 CONDUCT AND THE DURATION OF THAT CONDUCT; AND

24 (III) ANY OF THE FOLLOWING FACTORS AS TO WHICH EVIDENCE IS  
25 PRESENTED:

26 1. THE DEFENDANT'S AWARENESS OF AND ANY  
27 CONCEALMENT OF THE CONDUCT;

28 2. THE PROFITABILITY TO THE DEFENDANT OF THE  
29 WRONGFUL CONDUCT AND THE DESIRABILITY OF REMOVING THAT PROFIT AND OF  
30 HAVING THE DEFENDANT ALSO SUSTAIN A LOSS;

31 3. THE FINANCIAL CONDITION OF THE DEFENDANT;

32 4. CRIMINAL SANCTIONS IMPOSED ON THE DEFENDANT  
33 FOR THE SAME CONDUCT THAT IS THE BASIS FOR THE PUNITIVE DAMAGE CLAIM,  
34 THESE TO BE TAKEN INTO ACCOUNT IF OFFERED IN MITIGATION OF THE PUNITIVE  
35 DAMAGE AWARD; AND

36 5. FINAL CIVIL AWARDS AGAINST THE DEFENDANT FOR  
37 THE SAME CONDUCT THAT IS THE BASIS FOR THE PUNITIVE DAMAGE CLAIM, THESE  
38 TO BE TAKEN INTO ACCOUNT ONLY IN MITIGATION OF THE PUNITIVE DAMAGE  
39 AWARD AND ONLY:

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1                           A. IF THE AWARD IS A FINAL JUDGMENT THAT HAS BEEN  
2 RENDERED AND FOR WHICH APPEALS, IF ANY, HAVE BEEN EXHAUSTED; AND

3                           B. IF THE DEFENDANT CHOOSES TO INTRODUCE EVIDENCE  
4 OF THE CIVIL AWARDS.

5 11-906.

6           IN ANY ACTION IN WHICH PUNITIVE DAMAGES HAVE BEEN AWARDED, THE  
7 TRIAL COURT, IF THE AWARD WAS BY A JURY, AND THE APPELLATE COURT ON  
8 APPEAL, SHALL REVIEW THE AWARD TO ASSURE THAT THE AWARD IS SUPPORTED  
9 BY CLEAR AND CONVINCING EVIDENCE IN THE RECORD AND IS CONSISTENT WITH  
10 THE PRINCIPLES AND FACTORS STATED IN § 11-905 OF THIS SUBTITLE AND ANY  
11 OTHER PRINCIPLES AND FACTORS THAT ARE APPLICABLE UNDER MARYLAND LAW.

12 11-907.

13           (A) (1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE MEANINGS  
14 INDICATED.

15                           (2) "AGENT" INCLUDES A SERVANT.

16                           (3) "MANAGERIAL AGENT" MEANS AN AGENT WHO HAS BEEN  
17 AUTHORIZED BY A PRINCIPAL TO ACT IN A MANAGERIAL CAPACITY AND TO ACT ON  
18 BEHALF OF THE PRINCIPAL.

19                           (4) "PRINCIPAL" INCLUDES A MASTER.

20           (B) PUNITIVE DAMAGES MAY BE AWARDED AGAINST A PRINCIPAL FOR  
21 VICARIOUS LIABILITY IMPUTED BECAUSE OF AN ACT BY AN AGENT ONLY IF:

22                           (1) THE ACT OF THE AGENT OTHERWISE MEETS THE APPROPRIATE  
23 STANDARDS REQUIRED TO ESTABLISH LIABILITY FOR PUNITIVE DAMAGES AND  
24 FOR VICARIOUS LIABILITY UNDER APPLICABLE MARYLAND LAW; AND

25                           (2) AT LEAST ONE OF THE FOLLOWING IS PROVED BY CLEAR AND  
26 CONVINCING EVIDENCE TO BE TRUE:

27                           (I) THE PRINCIPAL OR A MANAGERIAL AGENT AUTHORIZED THE  
28 DOING AND MANNER OF THE ACT;

29                           (II) THE AGENT WAS UNFIT AND THE PRINCIPAL OR A  
30 MANAGERIAL AGENT WAS RECKLESS IN EMPLOYING OR RETAINING THE AGENT;

31                           (III) THE AGENT WAS EMPLOYED IN A MANAGERIAL CAPACITY  
32 AND WAS ACTING IN THE SCOPE OF EMPLOYMENT; OR

33                           (IV) THE PRINCIPAL OR A MANAGERIAL AGENT RATIFIED OR  
34 APPROVED THE DOING AND MANNER OF THE ACT.

35           (C) THIS SECTION DOES NOT APPLY WHEN DIRECT LIABILITY OF A PRINCIPAL  
36 FOR PUNITIVE DAMAGES IS BASED SOLELY ON THE ACT OF THE PRINCIPAL.

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1           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be construed  
2 only prospectively and may not be applied or interpreted to have any effect on or  
3 application to any case filed before the effective date of this Act.

4           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 1996.