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**By: Senators Pica, Currie, Blount, Young, McFadden, Ruben, Collins, Lawlah, Kelley, Middlebrooks, Hughes, Trotter, Forehand, Della, Van Hollen, and Colburn**

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 specifying the circumstances under which punitive damages may be  
4 awarded in certain civil actions; specifying the circumstances underwhich a  
5 principal, employer, or master may be held liable for punitive damages based upon  
6 acts or omissions of an agent, employee, or servant; providing for the allocation of  
7 punitive damages awarded to a party; limiting attorneys' fees in an action in which  
8 punitive damages are awarded; defining certain terms; providing for the application  
9 of this Act; and generally relating to punitive damages.

10 BY adding to

11 Article - Courts and Judicial Proceedings  
12 Section 11-111  
13 Annotated Code of Maryland  
14 (1995 Replacement Volume and 1995 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article - Courts and Judicial Proceedings**

18 11-111.

19 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
20 INDICATED.

21 (2) "ACTUAL MALICE" MEANS THE DOING OF A WRONGFUL ACT  
22 WITHOUT JUST CAUSE OR EXCUSE AND WITH:

23 (I) AN INTENT TO INJURE THE PERSON OR PROPERTY OF  
24 ANOTHER;

25 (II) EVIL MOTIVE; OR

26 (III) ILL WILL.

1 (3) (I) "PUNITIVE DAMAGES" MEANS ANY TYPE OF ADDITIONAL  
2 DAMAGES AWARDED TO PENALIZE, PUNISH, OR DETER A DEFENDANT AND OTHERS  
3 FROM CERTAIN CONDUCT.

4 (II) "PUNITIVE DAMAGES" INCLUDES VINDICTIVE DAMAGES AND  
5 EXEMPLARY DAMAGES.

6 (4) "WILLFUL, WANTON, OR RECKLESS" MEANS CONDUCT THAT IS  
7 CARRIED ON WITH DISREGARD FOR THE RIGHTS AND SAFETY OF OTHERS.

8 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,  
9 PUNITIVE DAMAGES MAY BE AWARDED IN A CIVIL ACTION OTHER THAN A  
10 PRODUCTS LIABILITY ACTION IF IT IS PROVEN BY A PREPONDERANCE OF THE  
11 EVIDENCE THAT THE DEFENDANT OR RESPONSIBLE PARTY ENGAGED IN FRAUD OR  
12 ACTED WITH ACTUAL MALICE OR WITH A WILLFUL, WANTON, OR RECKLESS  
13 DISREGARD FOR THE RIGHTS OF OTHERS.

14 (2) PUNITIVE DAMAGES MAY BE AWARDED IF IT IS PROVEN BY A  
15 PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT OR RESPONSIBLE  
16 PARTY ENGAGED IN FRAUD OR ACTUAL MALICE IN AN ACTION:

17 (I) ARISING OUT OF A CONTRACT;

18 (II) FILED UNDER TITLE 3, SUBTITLE 2A OF THIS ARTICLE; OR

19 (III) AGAINST A LANDLORD FOR INJURY OR LOSS CAUSED BY  
20 INGESTION OF LEAD.

21 (C) (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, IN A  
22 PRODUCTS LIABILITY ACTION, PUNITIVE DAMAGES MAY BE AWARDED IF IT IS  
23 PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT OR  
24 RESPONSIBLE PARTY:

25 (I) KNEW OR SHOULD HAVE KNOWN OF THE DANGEROUS  
26 NATURE OF THE PRODUCT; AND

27 (II) HAS SHOWN A DELIBERATE DISREGARD FOR THE RIGHTS AND  
28 SAFETY OF PERSONS WHO USE, CONSUME, OR ARE OR MAY BE EXPOSED TO THE  
29 PRODUCT.

30 (2) IN A PRODUCTS LIABILITY ACTION INVOLVING A PRODUCT  
31 APPROVED BY THE FOOD AND DRUG ADMINISTRATION OF THE UNITED STATES  
32 DEPARTMENT OF HEALTH AND HUMAN SERVICES, PUNITIVE DAMAGES MAY BE  
33 AWARDED IF IT IS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT THE  
34 DEFENDANT OR RESPONSIBLE PARTY:

35 (I) HAD ACTUAL KNOWLEDGE OF THE DEFECTIVE CONDITION OF  
36 THE PRODUCT THAT WAS CAUSALLY RELATED TO THE HARM THE PLAINTIFF  
37 ALLEGEDLY SUFFERED; OR

38 (II) EXHIBITED A WILLFUL REFUSAL TO KNOW OR APPRECIATE  
39 THE DEFECTIVE CONDITION OF THE PRODUCT THAT WAS CAUSALLY RELATED TO  
40 THE HARM THE PLAINTIFF ALLEGEDLY SUFFERED.

1 (D) (1) A PRINCIPAL, EMPLOYER, OR MASTER MAY NOT BE HELD LIABLE  
2 FOR PUNITIVE DAMAGES BASED UPON ACTS OR OMISSIONS OF AN AGENT,  
3 EMPLOYEE, OR SERVANT UNLESS:

4 (I) THE PRINCIPAL, EMPLOYER, OR MASTER KNEW OR SHOULD  
5 HAVE KNOWN OF THE UNFITNESS OF THE AGENT, EMPLOYEE, OR SERVANT, AND  
6 EMPLOYED OR CONTINUED TO EMPLOY THE AGENT, EMPLOYEE, OR SERVANT;

7 (II) THE PRINCIPAL, EMPLOYER, OR MASTER AUTHORIZED THE  
8 WRONGFUL CONDUCT;

9 (III) THE PRINCIPAL, EMPLOYER, OR MASTER RATIFIED OR  
10 APPROVED THE WRONGFUL CONDUCT; OR

11 (IV) THE AGENT, EMPLOYEE, OR SERVANT WAS EMPLOYED IN A  
12 MANAGERIAL CAPACITY AND WAS ACTING IN THE SCOPE OF EMPLOYMENT.

13 (2) RATIFICATION OR APPROVAL OF CONDUCT UNDER PARAGRAPH  
14 (1)(III) OF THIS SUBSECTION SHALL BE CONCLUSIVELY ESTABLISHED IF THE  
15 CONDUCT REPRESENTS A REPETITIVE COURSE OF ACTION DONE IN FURTHERANCE  
16 OF THE PRINCIPAL'S, EMPLOYER'S, OR MASTER'S BUSINESS.

17 (E) IF PUNITIVE DAMAGES ARE AWARDED TO A PARTY, ONE-HALF SHALL BE  
18 PAID TO THE GENERAL FUND OF THE STATE AND ONE-HALF SHALL BE PAID TO THE  
19 PARTY AWARDED THE PUNITIVE DAMAGES, AFTER THE PAYMENT OF ATTORNEYS'  
20 FEES, WHICH MAY NOT EXCEED 33 AND 1/3%.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to  
22 actions pending in a court on July 1, 1996, other than an action for which a final judgment  
23 has been rendered and for which all appeals, if any, have been exhausted, and to actions  
24 filed in a court on or after July 1, 1996, other than an action for which a final judgment  
25 has been rendered and for which all appeals, if any, have been exhausted.

26 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this Act  
27 or the application thereof to any person or circumstance is held invalid for any reason in  
28 a court of competent jurisdiction, the invalidity does not affect otherprovisions or any  
29 other application of this Act which can be given effect without the invalid provision or  
30 application, and for this purpose the provisions of this Act are declared severable.

31 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 July 1, 1996.