

# Senate Bill No. 591 Drastically Changes the Game for Plaintiff's Bringing Punitive Damages Claims

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Senate Bill No. 591, which was Truly Agreed to and Finally Passed by the Missouri General Assembly on May 12, 2020, modifies four statutes regulating punitive damages in civil cases. At the forefront of the bill is the new and heightened burden of proof resting on a plaintiff wishing to bring a punitive damages claim against a defendant. Under Section 510.263.1, a plaintiff must prove by "clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others." The bill will be sent to the Governor for approval and signing. If signed by the Governor, the provisions in the act shall apply to any civil cause of action filed on or after the effective date of August 28, 2020.

Senate Bill No. 591 provides a heightened burden of proof for plaintiffs wishing to bring a punitive damages claim in a civil lawsuit. Under the old law, a plaintiff could plead punitive damages in their initial petition but had to prove that the defendant "knew or had information from which he, in the exercise of ordinary care, should have known that the alleged negligent conduct created a high degree of probability of injury," and thus exhibited complete indifference or conscious disregard for the safety of others. *Coon v. Am. Compressed Steel, Inc.*, 207 S.W.3d 629, 637 (Mo. Ct. App. 2006). Now, a plaintiff cannot plead punitive damages without first seeking leave of court and must prove s/he is entitled to punitive damages by "clear and convincing evidence" of intentional harm without "just cause" or that the defendant acted with "deliberate and flagrant" disregard for the safety of others. The request for leave (1) must be supported by evidence and (2) shall not be based on harm to nonparties. Punitive damages can be recovered only if the jury awards more than nominal damages or if the claim for which nominal damages are solely awarded invokes certain protected rights, such as privacy rights. Common law limitations still apply unless they are inconsistent with new rules and the plaintiff still must comply with all other requirements and procedures under Missouri law.

In health care and/or medical malpractice lawsuits, instead defining punitive damages as damages intended to punish or deter “willful, wanton, or malicious conduct,” the bill limits the definition to only “malicious misconduct or conduct that intentionally caused damage to the plaintiff.” In these cases, in order to be awarded punitive damages, the jury must find by clear and convincing evidence that the health care provider intentionally caused damage or demonstrated malicious misconduct. Evidence of negligence, including indifference or conscious disregard for the safety of others, does not constitute intentional conduct or malicious misconduct.

Moreover, an employer is liable for punitive damages only where the employer either: (1) had a principal or managerial agent that authorized the doing and manner of the act; (2) recklessly employed or retained an unfit agent; (3) employed an agent in a managerial capacity and the agent acted in the scope of that employment; or (4) a principal or managerial agent of the principal ratified or approved the act. This is significant for hospitals and other employers as it limits their exposure to punitive damages under the four circumstances enumerated in the bill.

Currently, if the defendant has previously paid punitive damages in another state for the same conduct, following a hearing, the court may credit the jury award of punitive damages by the amount previously paid. This bill provides that the defendant may also be credited for punitive damages paid in a federal court as long as it arose from the same conduct on which the imposition of punitive damages is based.

Finally, discovery as to a defendant’s assets shall be allowed only after the trial court has granted leave to file a pleading seeking punitive damages. This differs from the old rule in that before the trial court merely needed to find that it was “more likely than not” that the plaintiff could present a “submissible case” to the trier of fact on the claim for punitive damages.

In sum, Senate Bill No. 591 limits all claims for punitive damages in civil cases. The bill ensures that claims for punitive damages are grounded in well-established facts, without inhibiting a valid claim for punitive damages.

RSMo. §§ 510.263, 510.265, 538.205, & 538.210.