

103^D CONGRESS
2^D SESSION

S. 2537

To regulate interstate commerce by providing uniform principles to address the multiple imposition of punitive damages, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 7 (legislative day, SEPTEMBER 12), 1994

Mr. DANFORTH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To regulate interstate commerce by providing uniform principles to address the multiple imposition of punitive damages, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Multiple Punitive
5 Damages Fairness Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Findings.
- Sec. 4. Purpose.
- Sec. 5. Definitions.

Sec. 6. General rule.

Sec. 7. Applicability; preemption; jurisdiction of Federal courts.

Sec. 8. Effective date.

1 **SEC. 3. FINDINGS.**

2 The Congress finds the following:

3 (1) Multiple or repetitive imposition of punitive
4 damages for harms arising out of a single act or
5 course of conduct may deprive a defendant of all of
6 the assets or insurance coverage of the defendant,
7 and may endanger the ability of claimants to receive
8 compensation for basic out-of-pocket expenses and
9 damages for pain and suffering.

10 (2) The detrimental impact of multiple punitive
11 damages exists even in cases that are settled, rather
12 than tried, because the threat of punitive damages
13 being awarded results in a settlement that provides
14 for a higher award amount than would ordinarily be
15 obtained. To the extent that this premium exceeds
16 what would otherwise be a fair and reasonable set-
17 tlement for compensatory damages, assets that could
18 be available for satisfaction of future compensatory
19 claims are dissipated.

20 (3) Fundamental unfairness results when any-
21 one is punished repeatedly for what is essentially the
22 same conduct.

23 (4) Federal and State appellate and trial
24 judges, and well-respected commentators, have ex-

1 pressed concern that multiple imposition of punitive
2 damages may violate constitutionally protected
3 rights.

4 (5) Multiple imposition of punitive damages
5 may be a significant obstacle to global settlement ne-
6 gotiations in repetitive litigation.

7 (6) Limiting the imposition of multiple punitive
8 damages awards would facilitate the resolution of
9 mass tort claims involving thousands of injured
10 claimants.

11 (7) Federal and State trial courts cannot pro-
12 vide solutions to problems caused by the multiple
13 imposition of punitive damages because they lack the
14 power or authority to prohibit subsequent awards in
15 other courts.

16 (8) Individual State legislatures can create only
17 a partial remedy to address problems caused by the
18 multiple imposition of punitive damages, because
19 each State lacks the power to control the imposition
20 of punitive damages in other States.

21 **SEC. 4. PURPOSE.**

22 The purpose of this Act is to provide a fair and bal-
23 anced resolution to the problem of multiple imposition of
24 punitive damages in interstate commerce.

1 **SEC. 5. DEFINITIONS.**

2 As used in this Act—

3 (1) the term “punitive damages” means dam-
4 ages awarded against any person or entity to punish
5 or deter such person or entity, or others, from en-
6 gaging in similar behavior in the future;

7 (2) the term “specific findings of fact” are find-
8 ings in written form focusing on specific behavior of
9 a defendant that demonstrates a conscious, flagrant,
10 indifference to the safety or welfare of the claimant;
11 and

12 (3) the term “claimant” means—

13 (A) any person who brings a civil action
14 and any person on behalf of whom such action
15 is brought;

16 (B) if such action is brought through or on
17 behalf of an estate, the term includes the claim-
18 ant’s decedent; and

19 (C) if such action is brought through or on
20 behalf of a minor or incompetent, the term in-
21 cludes the claimant’s parent or guardian.

22 **SEC. 6. GENERAL RULE.**

23 (a) GENERAL RULE.—Except as provided in sub-
24 section (b), punitive damages shall be prohibited in any
25 civil action in Federal or State court in which such dam-
26 ages are sought against a defendant based on the same

1 act or course of conduct for which punitive damages have
2 already been awarded against such defendant.

3 (b) CIRCUMSTANCES FOR AWARD.—

4 (1) SUBSTANTIAL NEW EVIDENCE.—If the
5 court determines in a pre-trial hearing that the
6 claimant will offer new and substantial evidence of
7 previously undiscovered, additional wrongful behav-
8 ior on the part of the defendant, other than the in-
9 jury to the claimant, the court may award punitive
10 damages in accordance with subsection (c).

11 (2) INSUFFICIENT AWARD.—If the court deter-
12 mines in a pre-trial hearing that the amount of pu-
13 nitive damages previously imposed were insufficient
14 to either punish the defendant's wrongful conduct or
15 to deter the defendant and others from similar be-
16 havior in the future, the court may award punitive
17 damages in accordance with subsection (c).

18 (c) LIMITATIONS ON AWARD.—A court awarding pu-
19 nitive damages pursuant to subsection (b) shall—

20 (1) make specific findings of fact on the record
21 to support the award;

22 (2) reduce the amount of the punitive portion
23 of the damage award by the sum of the amounts of
24 punitive damages previously paid by the defendant

1 in prior actions based on the same act or course of
2 conduct; and

3 (3) prohibit disclosure to the jury of the court's
4 determination and action under this subsection.

5 **SEC. 7. APPLICABILITY; PREEMPTION; JURISDICTION OF**
6 **FEDERAL COURTS.**

7 (a) APPLICABILITY TO PUNITIVE DAMAGES AC-
8 TIONS.—

9 (1) IN GENERAL.—Except as provided in para-
10 graph (2), this Act shall apply to any civil action
11 brought on any theory where punitive damages are
12 sought based on the same act or course of conduct
13 for which punitive damages have already been
14 awarded against the defendant.

15 (2) STATUTORY EXCEPTION.—This Act shall
16 not apply to any civil action involving damages
17 awarded under any Federal or State statute that
18 prescribes the amount of punitive damages to be
19 awarded.

20 (b) PREEMPTION.—Except as provided in subsection
21 (a)(2), this Act shall supersede any Federal or State law
22 regarding recovery for punitive damages.

23 (c) JURISDICTION OF FEDERAL COURTS.—The dis-
24 trict courts of the United States shall not have jurisdiction

1 over any civil action pursuant to this Act based on sections
2 1331 or 1337 of title 28, United States Code.

3 **SEC. 8. EFFECTIVE DATE.**

4 (a) IN GENERAL.—This Act shall take effect on the
5 date of its enactment.

6 (b) PENDING ACTIONS.—This Act shall apply to—

7 (1) any civil action pending on the date of en-
8 actment of this Act; and

9 (2) any civil action commenced on or after such
10 date, including any action in which the harm or the
11 conduct which caused the harm occurred prior to
12 such date.

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